UNITED STATES DISTRICT COURT

Northern District of Uta

UNITED STATES OF AMERICA
V.
Fred Quintana

JUDGMENT IN A CRIMINAL CASE
(For **Revocation** of Probation or Supervised Release)

Case Number: DUTX102CR000020-001
USM Number: 09377-081
Wendy Lewis
Defendant's Attorney

THE DEFENDANT:

☑ admitted guilt to violation of condition(s) 1,2,3 of the petition of the term of supervision.

☐ was found in violation of condition(s) _____ after denial of guilt.

The defendant is adjudicated guilty of these violations:

Violation Number	Nature of Violation	Violation Ended
Allegation #1	The defendant used or possessed alcohol	6/13/2006
Allegation #2	The defendant used or possessed alcohol	8/4/2006
Allegation #3	The defendant failed to comply with the conditions of the Community Corrections Center in that he was using or being	8/4/2006

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) _____ and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: 999-99-9999

Defendant's Date of Birth: 10/16/1977

8/23/2006
Date of Imposition of Judgment

Signature of Judge

Defendant's Residence Address:

Paul Cassell — US District Judge
Name of Judge — Title of Judge

8/25/06
Date

Defendant's Mailing Address:

DEFENDANT: Fred Quintana
CASE NUMBER: DUTX102CR000020-001

ADDITIONAL VIOLATIONS

Violation Number	Nature of Violation	Violation Concluded
	under the influence of intoxicants	

DEFENDANT: Fred Quintana
CASE NUMBER: DUTX102CR000020-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

10 months

☑ The court makes the following recommendations to the Bureau of Prisons:

Alcohol abuse treatment. Mental health treatment.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Fred Quintana
CASE NUMBER: DUTX102CR000020-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

No further supervision

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

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CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments set forth on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$	$	$ 19,816.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
U.S. Forest Service-Claims- Remaining Balance		$19,816.00	
324 25th Street see attached			
Ogden, Ut 84401			
Attention: Julie White			
Case No: 2:04-7151854			

TOTALS	$ 0.00	$ 19,816.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution or a fine more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☑ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☑ the interest requirement is waived for the ☐ fine ☑ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ☑ Lump sum payment of $ 19,816.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below); or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☑ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay.

F ☑ Special instructions regarding the payment of criminal monetary penalties:

Minimum payments of $100 a month

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes imprisonment, payment of criminal monetary penalties is be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

U.S. Courts
Case Inquiry Report

Case Number DUTX102CR000020 **Case Title** FRED J. QUINTANA

Summary Party Information:

Party#	Party Name	Debt Type	Total Owed	Total Collected	Total Outstanding
001	FRED J. QUINTANA	VICTIM RESTITUTION	24,181.00	4,365.00	19,816.00
001	FRED J. QUINTANA	SPECIAL PENALTY ASSESSMENT	100.00	100.00	0.00
			24,281.00	4,465.00	19,816.00

Summary Payee Information:

Payee Code	Payee Name	Total Owed	Total Paid	Total Outstanding
CONV006385	U.S. FOREST SERVICE	24,181.00	3,965.00	20,216.00
		24,181.00	3,965.00	20,216.00

Registry Information:

Depository Code	Depository Name	Account Type	Account Code	Depository Total

U.S. Courts
Case Inquiry Report

Detailed Party Information:

Party Number	Party Name
001	FRED J. QUINTANA

Debt Type
VICTIM RESTITUTION

	Principal	Interest	Penalty	Total
Fund	6855XX			N/A
Owed	24,181.00	0.00	0.00	24,181.00
Collected	4,365.00	0.00	0.00	4,365.00
Outstanding	19,816.00	0.00	0.00	19,816.00
Paid	3,965.00	0.00	N/A	3,965.00
Refunded	0.00	0.00	N/A	0.00
Available	100.00	0.00	N/A	100.00

SPECIAL PENALTY ASSESSMENT

	Principal	Interest	Penalty	Total
Fund	504100			N/A
Owed	100.00	0.00	0.00	100.00
Collected	100.00	0.00	0.00	100.00
Outstanding	0.00	0.00	0.00	0.00
Paid	0.00	0.00	N/A	0.00
Refunded	0.00	0.00	N/A	0.00
Available	100.00	0.00	N/A	100.00

Totals

	Principal	Interest	Penalty	Total
Owed	24,281.00	0.00	0.00	24,281.00
Collected	4,465.00	0.00	0.00	4,465.00
Outstanding	19,816.00	0.00	0.00	19,816.00
Paid	3,965.00	0.00	N/A	3,965.00
Refunded	0.00	0.00	N/A	0.00
Available	200.00	0.00	N/A	200.00

U.S. Courts
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Detailed Payee Information:

Payee Code	Payee Name
CONV006385	U.S. FOREST SERVICE

	Principal	Interest	Total
Owed	24,181.00	N/A	24,181.00
Apportioned	300.00	0.00	300.00
Paid	3,965.00	0.00	3,965.00
Refunded	0.00	0.00	0.00
Outstanding	20,216.00	N/A	20,216.00

Transaction Information:

Document Type/Number*	Document Date	Accomplished Date	Line Type	Amount	Party/Payee Name	Doc Actn	Trans Type	Fund
Account Number	Debt Type Line#	Debt Type		Payee Line#	Depository Line#			
CK 56	10/13/2004	10/20/2004	Principal	100.00	FRED J. QUINTANA	O	99	504100
DUTX102CR000020-001	2	SPECIAL PENALTY ASSESSMENT						
CK 56	10/13/2004	10/20/2004	Principal	2,115.00	FRED J. QUINTANA	O	99	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
PK 773	10/13/2004	10/20/2004	Principal	1,015.00	U.S. FOREST SERVICE	O	99	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION		1				
CT 143394	10/08/2004	10/15/2004	Principal	100.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
CT 4681000948	12/29/2004	12/30/2004	Principal	100.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
PT 05468100162	02/09/2005	02/09/2005	Principal	1,300.00	U.S. FOREST SERVICE	O	03	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION		1				
CT 4681001858	02/11/2005	02/14/2005	Principal	150.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
CT 4681002679	03/29/2005	03/30/2005	Principal	150.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
CT 4681003246	04/22/2005	04/25/2005	Principal	150.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
CT 4681003899	05/27/2005	05/31/2005	Principal	150.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
PT 05468100569	06/23/2005	06/23/2005	Principal	450.00	U.S. FOREST SERVICE	O	03	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION		1				

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Transaction Information:

Document Type/Number*	Document Date	Accomplished Date	Line Type	Amount	Party/Payee Name	Doc Actn	Trans Type	Fund
Account Number	Debt Type Line#	Debt Type	Payee Line#	Depository Line#				
CT 4681004537	06/21/2005	06/22/2005	Principal	150.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
CT 4681005262	07/21/2005	07/22/2005	Principal	100.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
CT 4681005845	08/19/2005	08/22/2005	Principal	100.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
PT 05468100697	09/13/2005	09/13/2005	Principal	400.00	U.S. FOREST SERVICE	O	03	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION	1					
CT 4681006467	09/21/2005	09/22/2005	Principal	100.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
CT 4681007037	10/24/2005	10/25/2005	Principal	100.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
CT 4681007632	11/18/2005	11/21/2005	Principal	100.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
CT 4681008239	12/27/2005	12/28/2005	Principal	100.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
PT 06468100164	01/24/2006	01/23/2006	Principal	400.00	U.S. FOREST SERVICE	O	03	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION	1					
CT 4681008807	01/27/2006	01/30/2006	Principal	100.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
CT 4681009526	03/03/2006	03/06/2006	Principal	100.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
CT 4681009998	03/29/2006	03/30/2006	Principal	100.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
CT 4681010427	04/19/2006	04/20/2006	Principal	100.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
PT 06468100439	05/15/2006	05/15/2006	Principal	400.00	U.S. FOREST SERVICE	O	03	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION	1					
CT 4681010971	05/16/2006	05/17/2006	Principal	100.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						
CT 4681011751	06/20/2006	06/21/2006	Principal	100.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						

U.S. Courts
Case Inquiry Report

Transaction Information:

Document Type/Number*	Document Date	Accomplished Date	Line Type	Amount	Party/Payee Name	Doc Actn	Trans Type	Fund
Account Number	Debt Type Line#	Debt Type	Payee Line#	Depository Line#				
CT 4681012441	07/18/2006	07/19/2006	Principal	100.00	FRED J. QUINTANA	O	06	6855XX
DUTX102CR000020-001	1	VICTIM RESTITUTION						

*** Document Type Legend**

Document Type	Document Type Name
CK	Cash Receipt - CCA Conversion
CT	Cash Receipt - CCA Automated
PK	Payment Authorization - CCA Conversion
PT	Payment Authorization - CCA Automated

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

GREAT AMERICAN INSURANCE COMPANY, Plaintiff, vs. WOODSIDE HOMES CORPORATION, KATHLEEN CLARK, ALI S. YAZD, PARVIN YOUSEFI, WILMA PARKINSON, Defendants.	ORDER AND MEMORANDUM DECISION Case No. 1:02 CV 161

Great American Insurance Co. filed this lawsuit seeking a declaration that it has no duty to defend or otherwise provide coverage to its insured, Woodside Homes Corp., in relation to three state lawsuits that involve allegations of defective home construction. Woodside filed a counterclaim, arguing that Great American breached the insurance contract, or alternatively, that the contract should be reformed to provide Woodside coverage for the state claims. Additionally, Woodside named an insurance broker, The Buckner Group, as a third-party defendant, claiming that if Great American prevails in this action, The Buckner Group is liable to Woodside for failing to procure requested insurance coverage.

Woodside and Great American have filed cross motions for summary judgment, each claiming that the plain language of the insurance contract supports their respective position concerning whether the claims alleged in the state suits are covered by the policy. Woodside

additionally contends that the operative contractual language is, at best, ambiguous and that the court should look beyond the four corners of the contract to discern the parties' intent. Also pending are cross motions for summary judgment addressing the potential liability of The Buckner Group. Woodside concedes, however, that any liability on the part of The Buckner Group is dependant on a finding that no coverage under the insurance contract exists.

Background

Woodside develops single-family homes in multiple states. Almost all of the construction work on these homes is performed by subcontractors working on Woodside's behalf. Because Woodside relies heavily on subcontractors, it attempts to secure insurance that provides coverage for damage caused by or arising out of the completed work of its subcontractors.

Woodside and The Buckner Group claim that they were previously able to secure such coverage from Travelers Indemnity Co. But when they could no longer obtain coverage from Travelers, The Buckner Group and Woodside began to explore the possibility of obtaining coverage from Great American. The Buckner Group served as an intermediary between Woodside and Great American while the sides negotiated the issuance of an insurance policy. Ultimately, Great American agreed to issue a general commercial liability policy to Woodside and the parties maintained their relationship for many years.[1]

The present dispute arose after Woodside was named as a defendant in three separate civil actions: (1) Clark v. Woodside Homes Corp., Weber County Second District Court Civil

[1]Great American issued the following polices naming Woodside as an insured: Policy No. PAC 914-78-17-01, effective December 12, 1996, through December 12, 1997; Policy No. PAC 914-78-17-02, effective December 12, 1997, through December 12, 1998; Policy No. PAC 914-78-17-03, effective December 12, 1998, through December 12, 1999; Policy No. PAC 914-78-17-04, effective December 12, 1999, through December 12, 2000; Policy No. PAC 914-78-17-05, effective December 12, 2000, through December 12, 2001.

No. 020901788 (the "Clark action"); (2) Yazd v. Woodside Homes Corp., Utah County Fourth District Court Civil No. 020402197 (the "Yazd action"); and (3) Parkinson v. Woodside Homes Corp., Utah County Fourth District Court Civil No. 030400017 (the "Parkinson action") (collectively, the "underlying actions"). Each of the underlying actions involve allegations of defective home construction, although the specific causes of action vary.

After becoming aware of the claims, Woodside tendered its defense to Great American, citing the relevant commercial general liability policies. Great American rejected each of Woodside's tenders and denied coverage. Great American then filed this suit seeking a declaration of its duties under the liability policies.

Legal Standard Governing Summary Judgment

Federal Rule of Civil Procedure 56 permits the entry of summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" Fed. R. Civ. P. 56(c); see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-51 (1986); Adler v. Wal-Mart Stores, Inc., 144 F.3d 664, 670 (10th Cir. 1998). The court must "examine the factual record and reasonable inferences therefrom in the light most favorable to the party opposing summary judgment." Applied Genetics Int'l, Inc. v. First Affiliated Sec., Inc., 912 F.2d 1238, 1241 (10th Cir. 1990). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient [to overcome a motion for summary judgment]; there must be evidence on which the jury could reasonably find for the plaintiff." Liberty Lobby, 477 U.S. at 252; see also Anderson v. Coors Brewing Co., 181 F.3d 1171, 1175 (10th Cir. 1999) ("A mere scintilla of evidence supporting the nonmoving party's theory does not create a genuine issue of material fact.").

Analysis

The manner in which the dispute between Great American and Woodside is resolved could have a potentially dispositive effect on the cross motions for summary judgment addressing the possible liability of The Buckner Group. Accordingly, the court will address Great American's obligations under the insurance polices before turning to Woodside's claims against The Buckner Group.

I. Obligations and Duties Under the Insurance Policies

An insurance company's duty to defend is broader than its duty to indemnify. Deseret Fed. Sav. & Loan Ass'n v. United States Fidelity & Guar. Co., 714 P.2d 1143, 1146 (Utah 1986). If the duty to defend attaches to any claim alleged in a complaint, the insurer is obligated to undertake the defense of its insured for all claims raised in the complaint. See Overthrust Constructors, Inc. v. Home Ins. Co., 676 F. Supp. 1086, 1091 (D. Utah 1987) ("Once an insurer has a duty to defend an insured under one claim brought against the insured, the insurer must defend all claims brought at the same time, even if some of the claims are not covered by the policy."); accord West Am. Ins. Co. v. AV&S, 145 F.3d 1224, 1230 (10th Cir. 1998).

"An insurer's duty to defend is determined by reference to the allegations in the underlying complaint. When those allegations, if proved, could result in liability under the policy, then the insurer has a duty to defend." Nova Casualty Co. v. Able Constr., Inc., 1999 UT 69, ¶ 8, 983 P.2d 575. Accordingly, to resolve the parties present dispute, a review of the allegations in the underlying actions is necessary.

A. The Underlying Actions

1. The Clark Action

The complaint in the Clark action fails to expressly allege any specific cause of action. It

alleges that the home the Clarks purchased from Woodside is practically uninhabitable due to "structural decay and damage, walls splitting, floors cracking, driveway sliding, and many other problems to[o] numerous to mention." (Amended Complaint ¶ 5, attached as Ex. 6 to Aff. of Glen Ison, Feb. 15, 2006 (dkt. #156-1) ("Ison Aff.").) The Clarks allege on information and belief that the problems with the residence were the result of the builders' failure to adequately account for water run-off. (See id. ¶ 7.)

In their prayer for relief, the Clarks request that "[t]he Court find that the Defendants have breached their written and verbal contracts and agreements with the Plaintiffs and that the home is substandard or uninhabitable; therefore, the home needs to be replaced and/or repaired in great detail." (Id. 2-3.)

2. The Yazd Action

The complaint in the Yazd action alleges that the house the plaintiffs purchased from Woodside quickly developed "cracks in the foundation[,] . . .the basement floor and the driveway." (Complaint ¶ 10, attached as Ex. 7 to Ison Aff.) Additionally, the plaintiffs allege that "[d]oors throughout the House ha[ve] shifted and [are] hard to open and close." (Id.) The plaintiffs claim that they are entitled to recover damages from Woodside, expressly stating the following claims: (1) Fraudulent Concealment, (2) Fraudulent Nondisclosure, (3) Breach of Warranty, (4) Mutual Mistake, and (5) Unilateral Mistake. (See id. at 6-11.)

The first two causes of action in the Yazd action allege wrongdoing on the part of Woodside itself and not its subcontractors. (See id. at 6-8.) Specifically, the complaint states that Woodside was aware of troublesome soil conditions and neglected to inform the home buyers. (See id.) The third cause of action expressly refers to the written contract entered into between the parties and alleges a breach of that contract. (See id. at 8.) Causes of action four

and five address the assumed quality of the home. (See id. at 9-11.) In the fourth cause of action, the plaintiffs claim mutual mistake, asserting that the parties mistakenly believed that the home was of the requisite quality at the time of its completion. (See id. at 9.) In the fifth cause of action, plaintiffs allege that they mistakenly accepted the house at the time of its completion because no construction defects were apparent at that time. (See id. at 10-11.)

3. The Parkinson Action

The complaint in the Parkinson action alleges two causes of action against Woodside: (1) Fraudulent Nondisclosure, and (2) Fraudulent Concealment. (Complaint 4-5, attached as Ex. 8 to Ison Aff.) The plaintiffs allege that the foundation of the home they purchased from Woodside began cracking within a year from the date of sale. (See id. ¶ 8.) The plaintiffs' claims are confined to allegations that Woodside had knowledge of a troublesome soil report and failed to inform the plaintiffs about that report. (See id. at 2-4.)

B. The Insurance Contract

Having described the nature of the allegations in the underlying actions, it is now necessary to compare those allegations with the coverage provided by the insurance policy[2] to determine if Great American's duty to defend is triggered by the underlying complaints.

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[2]Although Great American issued several policies to Woodside, the provisions relevant to the current action remained virtually unchanged from year to year. For ease of discussion, the court simply discusses the language of "the policy" without making a distinction between policy years. One notable distinction, however, is that the policies in effect from 1998 to 2001 contained an expanded definition of the term "occurrence." During those years, the policies defined an "occurrence" as

> [a]n accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results in bodily injury or property damage which first manifests on or after the inception of this policy period, as shown in the Declarations Page of the policy but prior to the earlier of the date of expiration or cancellation of this policy.

(Endorsement CG 82 10, attached as Ex. O to Aff. of Matthew L. Cookson (dkt. #152). Regardless of the definition of "occurrence" considered in analyzing the parties' claims, the outcome is the same.

The critical policy language appears in a form created and copyrighted by the Insurance Services Office, Inc. ("ISO") and which Great American and Woodside adopted without alteration. The insuring agreement contained in the policy provides that Great American will

> pay those sums that the insured becomes obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any suit seeking damages for "bodily injury" or "property damage" to which this insurance does not apply.

(Commercial General Liability Coverage Form ("CGL") 1, attached as Ex. B to Memo. in Supp. of Third-Party The Buckner Group's Mot. for Summ. J. (dkt. #141).) The policy then provides that coverage will be provided only if "the 'bodily injury' or 'property damage' is caused by an 'occurrence' that takes place in the 'coverage territory.'" (Id.) The policy defines an "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." (Id. at 14.)

Woodside argues that the property damage claimed in the underlying actions resulted from faulty work performed by its subcontractors. According to Woodside, that faulty work constitutes an occurrence triggering coverage. Great American responds by arguing that faulty work performed by subcontractors is not an "accident" under Utah law and is therefore not an "occurrence" under the insurance policy.

In support of its position, Great American relies on H.E. Davis & Sons, Inc. v. North Pacific Insurance Co., 248 F. Supp. 2d 1079 (D. Utah 2002). In that case, the court held that Utah law does not consider negligent work performed by an insured to be an occurrence because the consequences of negligent work are reasonably foreseeable and therefore no "accident" resulting from that work can occur. Id. at 1084 ("Plaintiff failed to adequately compact the soil,

with natural and foreseeable results. So long as the consequences of plaintiff's work were natural, expected, or intended, they cannot be considered an 'accident[.]'"). But while H.E. Davis directly answers the question of whether an insured's negligent work can be considered an accident under a commercial general liability policy, that case does not address the question here: whether faulty work performed by an insured's subcontractor can be considered an accident, and therefore an occurrence.

Courts that have addressed the question of whether deficient subcontractor work should be considered an occurrence under a general contractors insurance policy have reached different results. For example, in Nabholz Construction Corp. v. St. Paul Fire & Marine Insurance Co., 354 F. Supp. 2d 917 (E.D. Arkansas 2005), the court held that the faulty work of a subcontractor should not be considered an occurrence because the faulty work is not an accident from the standpoint of the general contractor. Id. at 921. In that case, "[t]he Court agree[d] that a contractor's obligation to repair or replace its subcontractor's defective workmanship should not be deemed 'unexpected' on the part of the contractor, and therefore, fails to constitute an 'event' for which coverage exists." Id.

The court in Nabholz also expressed its opinion that reaching a contrary result would inadvisably convert a commercial general liability policy into a performance bond. See id. at 922 ("The purpose of a CGL policy is to protect an insured from bearing financial responsibility for unexpected and accidental damage to people or property. It is not intended to substitute for a contractor's performance bond, the purchase of which is to insure the contractor against claims for the cost of repair or replacement of faulty work."); see also Bituminous Cas. Corp. v. R.C. Altman Builders, Inc., No. 2:01-4267-DCN, 2006 WL 2137233, at *4 (D.S.C. July 28, 2006) ("Finding coverage would penalize the general contractor's carrier rather than the negligent

party, the subcontractor. Further, affording coverage to a general contractor for damage to a residence stemming from its subcontractor's defective work would not encourage general contractors to more carefully select their subcontractors.").

In contrast, the court in Archon Invs., Inc. v. Great Am. Lloyds Ins. Co., 174 S.W.3d 334 (Tx. Ct. App. 2005), concluded that faulty work performed by subcontractors is properly considered an occurrence under a commercial general liability policy. See id. at 340 ("Because Archon could not have intended that the negligent work of its subcontractors cause physical damage to Braden's home, damage to Braden's property due to the negligence of Archon's subcontractors falls within the scope of an occurrence under the language of the CGL policy . . . ."); see also Lee Builders, Inc. v. Farm Bureau Mut. Ins. Co., 137 P.3d 486, 495 (Kan. 2006) ("The damage in the present case is an occurrence . . . because the faulty materials and workmanship provided by Lee's subcontractors caused continuous exposure . . . to moisture. The moisture in turn caused damage that was both unforseen and unintended.").

While a review of case law from other jurisdictions that addresses this topic is helpful, the resolution of this case requires an analysis of Utah law. See Lee Builders, 137 P.3d at 491 ("Our obligation . . . is not to address all the arguments and other holdings from all the other jurisdictions or to analyze all the competing expert commentary on the subject. Rather, our task is to decide the question of 'occurrence' in this case based upon Kansas law, to the extent possible.").

In Utah, whether an "accident" has occurred is determined from the viewpoint of the insured, not the actor causing injury. See Hoffman v. Life Ins. Co. of N.A., 669 P.2d 410, 416 (Utah 1983) ("[A] person is a victim of an accident when, from the victim's point of view, the occurrence causing the injury or death is not a natural and probable result of the victim's own

acts."); Archon Invs., Inc., 174 S.W.3d at 340 ("The insured's standpoint controls in determining whether there has been an 'occurrence' that triggers the duty to defend.").

As discussed, Utah case law indicates that an insured's own faulty or negligent work is not fairly characterized as an occurrence under a commercial general liability policy. See, e.g., H.E. Davis, 248 F. Supp. 2d at 1084. But it appears that no court has yet applied Utah law to the exact situation presented here: whether faulty work by a subcontractor is an occurrence from the standpoint of an insured employing that subcontractor. The Utah Supreme Court's holding in Hoffman, though not dealing with construction liability, is nevertheless instructive. In Hoffman, the court held that "a person is a victim of an accident when, from the victim's point of view, the occurrence causing the injury . . . is not a natural and probable result of the victim's own acts." Id. at 416 (first emphasis in original, second emphasis added). Given the Utah Supreme Court's focus on the acts of the insured when determining whether there has been an occurrence, it follows that the negligent acts of Woodside's subcontractors can be considered an occurrence from Woodside's "point of view," id.; cf. O'shaughnessy v. Smuckler Corp., 543 N.W.2d 99, 103 (Minn. Ct. App. 1996) ("A general contractor has minimal control over the work of its subcontractors by definition.").

Great American seeks to avoid this result by arguing that a commercial general liability policy is not intended to be a performance bond and that policy considerations weigh against providing coverage in the context presented by this case. The court in Bituminous cited such concerns in determining that faulty subcontractor work should not be considered an occurrence. See 2006 WL 2137233, at *4. But "the fact that the general contractor receives coverage will not relieve the subcontractor of ultimate liability for unworkmanlike or defective work. In such a case, an insurer will have subrogation rights against the subcontractor who performed the

defective work." O'Shaughnessy, 543 N.W.2d at 103. Further, while disallowing coverage for faulty subcontractor work would arguably increase the level of care general contractors take when selecting subcontractors, there are several other practical factors that already serve this function. A general contractor's concern about business reputation and the understandable desire to avoid time consuming repair work--regardless of whether the general contractor must foot the bill for such work--are two such factors that are readily apparent.

Further, the conclusion that defective subcontractor work can be considered an occurrence harmonizes other provisions contained in the policy that might otherwise be in tension. "An insurance policy is merely a contract between the insured and the insurer and is construed pursuant to the same rules applied to ordinary contracts." Alf v. State Farm Fire & Cas. Co., 850 P.2d 1272, 1274 (Utah 1993). When interpreting a contract, "a court must attempt to construe the contract so as to harmonize and give effect to all of its provisions." Green River Canal Co. v. Thayne, 2003 UT 50, ¶ 31, 84 P.3d 1134 (internal quotation and brackets omitted).

Here, the policy excludes coverage for "'[p]roperty damage to 'your work' arising out of it or any part of it and included in the 'products-completed operations hazard.'" (CGL 4.) The policy goes on to provide that "[t]his exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor." (Id.) In Lee Builders, the court commented that this exclusionary language--and the exception to that exclusion--supports the determination that defective subcontractor work is covered under policies like that at issue here. 137 P.3d at 493-94. In Lee Builders, the court approved the analysis of the exclusionary language previously undertaken by the Kansas Court of Appeals. See id. Specifically, the Kansas Supreme Court agreed that if the term "occurrence" is given a narrow construction, the subcontractor exception to the "your work" exclusion "would be rendered

meaningless." Id. at 494 (internal quotation omitted).

Great American argues that at least one commentator has managed to articulate a situation in which the subcontractor exception would operate even when the term "occurrence" is given the narrow construction that it urges in this case. See Christopher Burke, "Exposing the Faulty Premise--The Insurer's Interpretation of 'Occurrence' Does Not Render the Subcontractor Exception to the 'Your Work' Exclusion Meaningless," Mealey's Litigation Report: Construction Defects Insurance, vol 2, no. 11, pg. 21 (Dec. 2005). The two examples there "deal with the situation when work or operations performed pursuant to one contract cause damage to work performed under a separate contract." See id. at 24-25 (giving examples involving the construction of two neighboring homes and a townhouse). Despite the two admittedly plausible situations described in commentary, it is undeniable that excluding faulty subcontractor work from the definition of "occurrence" would reduce the operation of the subcontractor exception so drastically that the language would virtually cease to be of any meaningful effect.

Additionally, although the court rests its conclusion on the language of the policy itself[3], the interpretation put forward by Woodside comports with the drafting history of the commercial general liability policy form used by Great American. See 9A Couch on Ins. § 129.18 ("Due to the increasing use of subcontractors on construction projects, many general contractors were not satisfied with the lack of coverage provided under commercial general liability policies where the

[3]Great American has filed a motion to strike all evidence submitted by Woodside and The Buckner Group that purports to shed light on the proper interpretation of the insurance agreement. Great American argues that the consideration of such evidence is impermissible absent a finding that the insurance contract is ambiguous. As noted by the Tenth Circuit in Flying J., Inc. v. Comdata Network, Inc., 405 F.3d 821 (10th Cir. 2005), there is an apparent conflict in Utah case law concerning whether extrinsic evidence may be considered by the court when determining whether a contract is ambiguous. See id. at 831-32. Because the court rests its decision on the language contained within the four corners of the contract, there is no need to address this apparent conflict and Great American's motion is moot.

general contractor was not directly responsible for the defective work. In 1976 the insurance industry responded by the introduction of the Broad Form Property Damage Endorsement, which extended coverage to insureds for property damage caused by the work of their subcontractors. [The endorsement] was added directly to the body of the policy in 1986."); see also "Broad Form Property Damage Coverage Explained," Insurance Services Office, Jan. 29, 1979 (explaining the broad form property damage coverage extends previously existing coverage by "modify[ing] the application of the property damage exclusion")

Certainly, different jurisdictions have approached and answered the question presented in this case in various ways. But the better-reasoned approach, and the approach that is most consistent with Utah law, views faulty subcontractor work as an occurrence from the standpoint of the insured. Nevertheless, the allegations contained in the underlying actions are not entirely confined to allegations of defective subcontractor work. Accordingly, a comparison between the complaints in the underlying actions and the coverage provided by the commercial general liability policy is necessary.

C. Comparison Between the Insurance Agreement and the Underlying Complaints

1. The Parkinson Action Alleges Only Intentional Wrongdoing on the Part of Woodside

Great American argues that any claims of fraudulent concealment or fraudulent misrepresentation are outside the scope of the insurance agreement because they involve allegations of intentional conduct on the part of Woodside itself and therefore do not involve an "occurrence" under the policy. Because the Parkinson action alleges only nondisclosure on the part of Woodside, Great American argues that coverage cannot be triggered and therefore it has no duty to defend Woodside in that action. Utah case law supports Great American's argument.

Nova Casualty, 1999 UT 69, is particularly instructive here. That case involved a situation where developers allegedly informed home buyers that restrictive covenants previously placed on the property would not prevent the home buyers from running a psychotherapy business in the home. Id. ¶¶ 3-4. According to the home buyers, that representation was false. Id. ¶ 4. Citing the restrictive covenants, the subdivision sued the home buyers and compelled them to shut down their business. See id. ¶ 3. The home buyers then sued the developers, who, in turn, tendered the suit to their insurance provider. Id. ¶ 5. The insurance company refused to defend the developers and the Nova Casualty litigation followed.

The Utah Supreme Court concluded that the insurance company was not obligated to defend the developers because the complaint alleged an intentional act on the part of the developers themselves. The court stated that "it appears that the closing down of the . . . business was the natural and probable consequence of [the developers'] representations and that it was very likely such result would occur if its representations were to be untrue, as they seem to have been." Id. ¶ 15 (internal quotation and quotation marks omitted). The court then noted that other jurisdictions had similarly concluded that intentional misrepresentations cannot properly be considered an "occurrence" under an insurance policy. See id. ¶ 14 (citing Safeco Ins. Co. v. Andrews, 915 F.2d 500, 502 (9th Cir. 1990) (misrepresentations are not an occurrence under an insurance policy); Dykstra v. Foremost Ins. Co., 17 Cal.Rptr.2d 543, 545 (intentional or fraudulent acts are purposeful rather than accidental and are therefore not a covered occurrence); M.L. Foss, Inc. v. Liberty Mut. Ins. Co., 885 P.2d 284, 285 (Colo. Ct. App. 1994) (misrepresentations are not an occurrence under an insurance policy); First Wyoming Bank v. Continental Ins. Co., 860 P.2d 1094, 1100 (Wyo. 1993) (no duty to defend against claims that insured made misrepresentations)).

Green v. State Farm Fire & Casualty Co., 2005 UT App 564, 127 P.3d 1279, is similarly instructive. In that case, developers sought insurance coverage against claims brought by a purchaser of a home who asserted that the developers intentionally or negligently failed to disclose material information and breached an implied warranty. Id. ¶ 7. Specifically, the home buyer alleged that the developers were aware of, but did not disclose, a report issued by a soils engineer that discussed the risk of a landslide in the area. See id. ¶¶ 3, 7. A landslide did occur several years after the developers sold the home. See id. ¶¶ 2, 5.

The Utah Court of Appeals concluded that the allegations in the underlying complaint did not give rise to a duty to defend. The court reasoned that

> [t]he essence of Fennell's complaint is that he was damaged by Green's failure to disclose. However, it must be conceded that Fennell does not claim that any failure to disclose caused the landslide. Further, we have already concluded that a failure to disclose, whether intentional or negligent, is not an 'occurrence' under the Policy. Coverage cannot be restored by characterizing the landslide as an 'accident' and therefore, an 'occurrence' under the Policy, when the landslide did not result from the failure to disclose, but from other causes.

Id. ¶ 30.

Under the rationale of Nova Casualty and Green, the allegations in the Parkinson action cannot result in insurance coverage because the claims in that case are confined to fraudulent and negligent nondisclosure. Even though the home in the Parkinson action may have suffered damage flowing from faulty construction, the complaint in the Parkinson action, like the situation in Green, seeks recovery for damage caused by nondisclosure, not damage caused by faulty construction.

2. The Yazd Complaint Contains Allegations that Could Trigger Coverage and the Duty to Defend Therefore Applies

As already discussed, the complaint in the Yazd action alleges: (1) fraudulent

concealment, (2) fraudulent nondisclosure, (3) breach of warranty, (4) mutual mistake, and (5) unilateral mistake. While the fraudulent concealment and fraudulent nondisclosure claims do not trigger Great American's duty to defend for the same reasons applicable to the Parkinson action, the other claims in the Yazd action warrant analysis.

Great American claims that the breach of warranty claim in the Yazd complaint does not trigger the duty to defend because it is a contract claim to which the insurance policy is inapplicable. Great American rests this assertion on language in the insuring provisions of the policy that limits coverage to damages the insured is "legally obligated to pay" and "liability imposed by law." (CGL 1.) Great American contends that this language confines coverage to liability arising from tort actions. Great American cites VBF, Inc. v. Chubb Group of Insurance Cos., 263 F.3d 1226 (10th Cir. 2001), in support of this proposition. In VBF, the Tenth Circuit, applying Oklahoma law, concluded that "[t]he phrases 'legally obligated to pay' and 'liability imposed by law' refer only to tort claims and not contract claims." Id. at 1231 (citing Natol Petroleum Corp. v. Aetna Ins. Co., 466 F.2d 38, 39-42 (10th Cir. 1972); Action Ads, Inc. v. Great Am. Ins. Co., 685 P.2d 42, 42-45 (Wyo. 1984); Lee. R. Russ & Thomas F. Segalla, 7 Couch on Insurance § 103:14 (3d ed. 2000)).

While VBF appears categorical in its statement that the insuring language here imposes liability on the insurer only to the extent a tort claim is pursued against the insured, other authority does not make such a clear distinction. See, e.g., Malecki & Flitner, Commercial General Liability 6 (6th ed. 1997) ("The expression 'legally obligated' connotes legal responsibility that is broad in scope. It is directed at civil liability [that] can arise from either unintentional tort, under common law, statute or contract."); 9 Couch on Insurance § 126:3 (3d ed. 1997) ("Whether a particular legal claim falls within the coverage afforded by a liability

policy is not affected by the form of the legal proceeding. Accordingly, the legal theory asserted by the claimant is immaterial to the determination of whether the risk is covered."). In fact, the case law indicates that the distinction drawn between claims for tort and contract recovery has typically been used as a shorthand method for determining whether the event underlying the damage was caused by an occurrence the policy was meant to cover. See Natol Petroleum, 466 F.2d at 42 ("[T]he phrase of liability 'imposed by law' describe[s] the 'the kind of liability' which the insurer agreed to insure against."). As a result, while the distinction between contract and tort liability may serve as a useful general rule, coverage will turn on the insuring agreement itself and the particular form of a claim will not govern the issue of coverage. See 2 Insurance Claims & Disputes 4th § 11:7 ("Could an insurer successfully argue that [breach of warranty] claims are not covered because a breach of warranty claim is a type of contract claim? The correct answer should be no. Again, if there has been an occurrence and property damage, and no exclusion applies, there should be coverage.").

Gibbs M. Smith, Inc. v. U.S. Fidelity & Guaranty Co., 949 P.2d 337 (Utah 1997), also supports this conclusion. In that case, the Utah Supreme Court addressed the effect of a contractual liability exclusion clause in a commercial general liability policy. See id. at 340-341. The court noted that the clause in question excluded coverage for liability assumed by the insured under contract. See id. at 341. The court accepted the insurer's argument that the exclusion applied only to indemnification and hold-harmless agreements and stated that if "the provision does not apply to the insured's breaches of its own contracts, such breaches are not excluded and coverage applies." Id. Gibbs M. Smith indicates that Utah has not adopted wholesale the notion that commercial general liability polices confine the insurer's liability to tort actions alone, but that Utah law looks to the substance of a particular claim not its form. See

id. at 342 ("If the contract exclusion clause excluded all liability associated with a contract made by the insured, commercial liability insurance would be severely limited in its coverage.").

The substance of the breach of warranty claim contained in the Yazd complaint is that the plaintiffs are entitled to recover from Woodside as a result of the negligent construction of its subcontractors. Having already determined that faulty work performed by Woodside's subcontractors can constitute an "occurrence" under the liability policy, it follows that the allegations in the Yazd's complaint give rise to a duty to defend.

Great American also argues that the claims of mutual mistake and unilateral mistake alleged in the Yazd complaint do not give rise to coverage or a duty to defend because only equitable relief is available for those claims. But "[o]nce an insurer has a duty to defend an insured under one claim brought against the insured, the insurer must defend all claims brought at the same time, even if some of the claims are not covered by the policy." Overthrust Constructors, Inc.. 676 F. Supp. at 1091. Accordingly, the court need not address the merits of Great American's assertion regarding the mistake claims pleaded in the Yazd complaint.

3. The Clark Action Contains Allegations that Could Trigger Coverage and Therefore the Duty to Defend Applies

Although the complaint governing the Clark action does not expressly state any particular cause of action, when viewed as a whole, the allegations in the complaint, if proven, could trigger coverage under the policy. The critical language in the Clark complaint appears in the plaintiffs' prayer for relief. Specifically, plaintiffs request that "[t]he Court find that the Defendants have breached their written and verbal contracts and agreements with the Plaintiffs and that the home is substandard or uninhabitable; therefore, the home needs to be replaced and/or repaired in great detail." (Amended Complaint 2-3, attached as Ex. 6 to Ison Aff.) As

with the allegations in the Yazd complaint, the complaint governing the Clark action asserts that Woodside is liable to the plaintiffs for damage caused by the faulty work of Woodside's subcontractors. Accordingly, for the reasons already discussed, insurance coverage may be implicated and the duty to defend applies.

II. Liability of The Buckner Group

Woodside and The Buckner Group have filed cross motions for summary judgment concerning potential liability of The Buckner Group to Woodside for failure to procure requested insurance coverage.[4] Although the court concluded that Great American is not obligated to defend all of the underlying actions, The Buckner Group is nevertheless entitled to summary judgment.

The failure of an insurance broker to procure coverage that a potential insured represents to a broker as being essential can result in liability against the broker. See Harris v. Albrecht, 2004 UT 13, ¶¶ 11-13, 86 P.3d 728. But the undisputed facts in this case establish that The Buckner Group delivered an insurance policy to Woodside that met Woodside's expectations. Leonard Arave, the chief financial officer and vice president of Woodside, testified at his deposition as follows:

> Q. And so after you got your policy from Great American, did you feel that you got in the policy what you and [The Buckner Group] had discussed getting?
>
> A. Yes.
>
> Q. And the only thing that's changed since then is the fact that Great

[4]The court notes that Woodside requested that its motion for summary judgment against The Buckner Group "be considered only if the Court denies Woodside's Motion for Partial Summary Judgment against . . . Great American[.]" (Memo. in Supp. of Woodside Homes Corp.'s Mot. for Part. Summ. J. Against The Buckner Group 1 (dkt. #143).)

American has apparently construed the policy in a manner different that and [The Buckner Group] intended?

A. And I believe what the policy says, but yes, they have gotten very creative.

Q. And I take it you understand [The Buckner Group] doesn't control the insurance company, obviously?

A. No. You know, I--again, I think [The Buckner Group] was honest and forthcoming and I--you know, I think we got--as far as [The Buckner Group] is concerned, what's there is there. I think it's pretty obvious what's there is there. But no, I understand that.

. . . .

Q. But the language you wanted was--[The Buckner Group] got you what language you wanted?

A. As we looked at it and discussed things, and as I did my research and as I listened to [The Buckner Group's] recommendations, yes, we got what we wanted.

(Depo. of Leonard K. Arave, pp. 104-05, attached as Ex. G to Memo. in Supp. of The Buckner Group's Mot. for Summ. J. (dkt. #141-1).

Woodside desired a commercial general liability policy that included broad form property damage coverage that would provide Woodside coverage for faulty work performed by its subcontractors. The policy that The Buckner Group secured for Woodside contained industry-standard language that the parties understood would provide that coverage. As the court has already held, the policy does, in fact, provide coverage for the faulty work of subcontractors. All the record evidence points in one direction: The Buckner Group used reasonable care in attempting to secure insurance coverage for Woodside and both The Buckner Group and Woodside were satisfied with the insurance policy they ultimately obtained from Great American.

To the extent Woodside claims that The Buckner Group was obligated to secure an insurance policy that provided Woodside coverage for its own, non-accidental acts--like those at

issue in the Parkinson action--Woodside's argument must be rejected. Beyond the axiomatic fact that a commercial general liability policy is only applicable to accidental events, there is nothing in the record that indicates that Woodside expected insurance coverage that would insulate it from claims that it fraudulently concealed or misrepresented material facts to home buyers. Accordingly, The Buckner Group is entitled to summary judgment on Woodside's claims.

Conclusion

The complaints in the Clark action and the Yazd action seek recovery for damage caused by the faulty work of Woodside's subcontractors. As discussed, those claims could trigger coverage under the insurance agreement between Great American and Woodside. Because those actions implicate insurance coverage, Great American is not entitled to summary judgment on Woodside's claim that Great American breached the implied covenant of good faith and fair dealing. But Great American is entitled to summary judgment that it has no obligation to defend or indemnify Woodside for the claims raised in the Parkinson action.

Further, because the undisputed facts establish that The Buckner Group procured the insurance coverage that Woodside requested, The Buckner Group is entitled to summary judgment on Woodside's claims against it.

Consistent with the foregoing analysis, the court orders as follows:

(1) Third-Party Defendant The Buckner Group's Motion for Summary Judgment (dkt. #140) is GRANTED.

(2) Defendant/Counter-Claimant/Third Party Plaintiff Woodside Homes Corporation's Motion for Partial Summary Judgment Against Third Party Defendant The Buckner Group (dkt. #142) is DENIED.

(3) Defendant/Counter-Claimant/Third Party Plaintiff Woodside Homes Corporation's

Motion for Partial Summary Judgment Against Plaintiff/Counter-Defendant Great American Insurance Company (dkt. #147) is GRANTED in part and DENIED in part.

(4) Great American's Motion for Summary Judgment (dkt. #154) is GRANTED in part and DENIED in part.

(5) Motion to Strike or Disregard Inadmissible Evidence (dkt. #162) is DENIED as moot.

DATED this 28th day of August, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

JACK R. YOUNGS, JAMES G. CORELL, WILLIAM R. MCDAVID, and MARGERET B. MCDAVID Plaintiffs, vs. JACK BEHNKEN, NANCY BEHNKEN, JOHN BEHNKEN, SANDI BEHNKEN, WILLIAM BEHNKEN, AMERICAN NUTRITION INC., a Utah Corporation; ROCKY MOUNTAIN MILLING LLC, a Utah Limited Liability Company; SOLAR ENGINEERING LTD., a Utah Limited Partnership, Defendants/Counterclaim Plaintiffs.	ORDER DENYING MOTION TO WITHDRAW, WITHOUT PREJUDICE Case No. 1:04-CV-00183 PGC

The law firm of Howrey, LLP, and David A. Greenwood move to withdraw to as attorney for defendant, American Nutrition, Inc., in this matter. This motion, however, does not comply with the local rules governing such motions. The motion makes no showing of consent of the clients or other good cause.

The court, therefore, DENIES the motion [#96] WITHOUT PREJUDICE. The movants have leave to re-file a motion that complies with D.U. Civ. R. 83-1.4.

DATED this 28th day of August, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. ANDREW DAVID JARAMILLO, Defendant.	TRIAL ORDER Criminal No. 1:05-CR-000136

The final pretrial conference in this matter is scheduled for November 7, 2006, at 3:30 p.m.

This case is set for a 2-day trial to begin on November 20, 2006, at 8:30 a.m. The attorneys are expected to appear in court at 8:00 a.m. on the first day of trial for a brief pre-trial meeting.

Counsel are instructed as follows:

1. Court-Imposed Deadlines.

The deadlines described in this order cannot be modified or waived in any way by a stipulation of the parties. Any party that believes an extension of time is necessary **must** make an appropriate motion to the court.

2. Jury Instructions

The court has adopted its own standard general jury instructions, copies of which may be obtained from the court prior to trial. The procedure for submitting proposed jury instructions is as follows:

(a) The parties must serve their proposed jury instructions on each other **at least ten business days before trial**. The parties should then confer in order to agree on a single set of instructions to the extent possible.

(b) If the parties cannot agree upon one complete set of final instructions, they may submit separately those instructions that are not agreed upon. However, it is not enough for the parties to merely agree upon the general instructions and then each submit their own set of substantive instructions. The court expects the parties to meet, confer, and agree upon the wording of the substantive instructions for the case.

(c) The joint proposed instructions (along with the proposed instructions upon which the parties have been unable to agree) must be filed with the court **at least five business days before trial**. All proposed jury instructions must be in the following format:

(i) An original and one copy of each instruction, labeled and numbered at the top center of the page to identify the party submitting the instruction (e.g., "Joint Instruction No. 1" or "Plaintiff's Instruction No. 1"), and including citation to the authority that forms the basis for it.

(ii) A 3.5" high density computer diskette containing the proposed instructions, without citation to authority, formatted for Wordperfect 6.1 through 8.0. Any party unable to comply with this requirement must contact the court to make alternative arrangements.

(d) Each party should file its objections, if any, to jury instructions proposed by any other party **no later than two business days before trial**. Any such objections must recite the proposed instruction in its entirety and specifically highlight the objectionable language contained therein. The objection should contain both a concise argument why the proposed language is improper and citation to relevant legal authority. Where applicable, the objecting party **must** submit, in conformity with paragraph 2(c)(i) - (ii) above, an alternative instruction covering the pertinent subject matter or principle of law. Any party may, if it chooses, submit a brief written reply in support of its proposed instructions **on the day of trial**.

(e) All instructions should be short, concise, understandable, and neutral statements of law. Argumentative instructions are improper and will not be given.

(f) Modified versions of statutory or other form jury instructions (e.g., Federal Jury Practice and Instructions) are acceptable. A modified jury instruction must, however, identify the exact nature of the modification made to the form instruction and cite the court to authority, if any, supporting such a modification.

3. Verdict Forms

The procedure outlined for proposed jury instructions will also apply to verdict forms.

4. Requests for Voir Dire Examination of the Venire

The parties may request that, in addition to its usual questions, the court ask additional specific questions to the jury panel. Any such request should be submitted in writing to the court and served upon opposing counsel **at least five business days before trial.**

5. Motions in Limine

All motions in limine are to be filed with the court **at least five business days before trial**, unless otherwise ordered by the court.

6. Trial Briefs

Each party should file its Trial Brief, if any, no later than five business days before trial.

7. Exhibit Lists/Marking Exhibits

All parties are required to prepare an exhibit list for the court's use at trial. The list contained in the pretrial order will not be sufficient; a separate list must be prepared. Plaintiffs should list their exhibits by number; defendants should list their exhibits by letter. Standard forms for exhibit lists are available at the clerk's office, and questions regarding the preparation of these lists may be directed to the courtroom deputy, Sandy Malley, at 524-6617. All parties are required to pre-mark their exhibits to avoid taking up court time during trial for such purposes.

8. Courtroom Conduct

In addition to the rules outlined in the local rules, the court has established the following ground rules for the conduct of counsel at trial:

(a) Please be on time for each court session. In most cases, trial will be conducted from 8:30 a.m. until 1:30 p.m., with two fifteen minute breaks. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have an associate handle them for you.

(b) Stand as court is opened, recessed or adjourned.

(c) Stand when the jury enters or retires from the courtroom.

(d) Stand when addressing, or being addressed by, the court.

(e) In making objections and responding to objections to evidence, counsel should state the legal grounds for their objections with reference to the specific rule of evidence upon which they rely. For example, "Objection . . . irrelevant and inadmissible under Rule 402." or "Objection . . . hearsay and inadmissible under Rule 802."

(f) Sidebar conferences are discouraged and will not be allowed except in **extraordinary** circumstances. Most matters requiring argument should be raised during recess. Please plan accordingly.

(g) Counsel need not ask permission to approach a witness in order to **briefly** hand the witness a document or exhibit.

(h) Address all remarks to the court, not to opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses. Counsel shall instruct all persons at counsel table that gestures, facial expressions, audible comments, or any other manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

(i) Refer to all persons, including witnesses, other counsel, and parties, by their surnames and not by their first or given names.

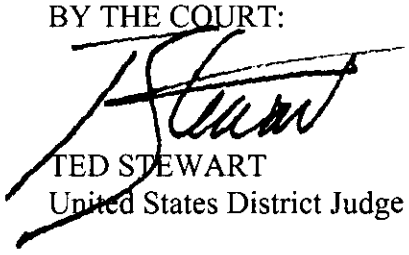
(j) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections during direct examination shall be the attorney recognized for cross examination.

(k) Offers of, or requests for, a stipulation shall be made out of the hearing of the jury.

(l) When not taking testimony, counsel will remain seated at counsel table throughout the trial unless it is necessary to move to see a witness. Absent an emergency, do not leave the courtroom while court is in session. If you must leave the courtroom, you do not need to ask the court's permission. Do not confer with or visit with anyone in the spectator section while court is in session. Messages may be delivered to counsel table provided they are delivered with no distraction or disruption in the proceedings.

DATED this 28th day of August, 2006.

BY THE COURT:



TED STEWART
United States District Judge

In the United States District Court
for the District of Utah, Central Division

TROY MILLER, Plaintiff, vs. SAIA MOTOR FREIGHT LINE, INC., Defendant.	**ORDER** Case No. 1:05cv00052

This matter is before the Court on defendant's Motion for Summary Judgment pursuant to Rule 56(c). Fed. R. Civ. P. Plaintiff is represented by Gregory W. Stevens, and defendant is represented by Ruth Shapiro and Phillip Ferguson of the law firm Christensen & Jensen. Defendant's motion was fully briefed and oral argument was heard on August 2, 2006. The motion was submitted for decision after which the Court took the matter under advisement.

FACTUAL BACKGROUND

Plaintiff, Troy Miller, had been employed with defendant corporation, SAIA Freight Line, as a truck driver for roughly 12 years, prior to his termination on July 13, 2004. Defendant claims that plaintiff was terminated because of accidents in which he was involved.

From 1997 until his termination, plaintiff was involved in five accidents, three of which were ruled to be preventable. Two of these accidents occurred in the month immediately prior to his termination. The first of these two, the June 14th accident, was ruled as non-preventable by the corporation. The second, the June 28th accident, was ruled to be preventable

and involved property damage in excess of $18,000.

On June 5, 2004, plaintiff was assigned a run from Salt Lake City to Boise and back. Plaintiff states that he was asked by central dispatch to alter this route so as to pass through Twin Falls, pick up some trailers, and continue on to Boise and then back to Salt Lake City. Plaintiff claims that he refused this run because it would require driving hours in excess of the 11 hours of driving time allowed by the Hours of Service ("HOS") regulations, as promulgated by the Department of Transportation ("DOT"). On June 24, 2004, plaintiff refused to accept another trucking run, from Salt Lake City to Grand Junction and back, because it would exceed the 14 hours of on-duty time allowed by the HOS regulations. Plaintiff alleges he notified his supervisor, Kevin Mayfield ("Mayfield"), following both refusals stating that he believed that the runs were illegal under the regulations. Plaintiff also alleges that he notified the corporate dispatch office in Georgia of his refusals.

Following these events, the Director of Safety, Phil Jennings ("Jennings"), and the Vice President of Human Resources, Reuben Gegenheimer ("Gegenheimer"), both of whom were located in Georgia, arranged a conference call to discuss possible termination of the plaintiff. Plaintiff's supervisor, Kevin Mayfield participated in this conference call. The aforesaid Georgia-based corporate officers denied having knowledge of plaintiff's claim that he had refused two runs because of illegality under the regulations, and that this was the real reason for his termination.

STANDARD FOR SUMMARY JUDGMENT

Summary Judgment is appropriate where the evidence presented "show[s] that

there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In determining whether the evidence weighs heavily enough in favor of one party that summary disposition is merited, "the court views the record and all reasonable inferences to be drawn therefrom in the light most favorable to the nonmoving party." *Jeffries v. Kansas*, 147 F.3d 1220, 1228 (10th Cir. 1998). A dispute of material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Richmond v. ONEOK, Inc.*, 120 F. 3d 205, 208 (10th Cir. 1997).

DISPUTED FACTS

There are several genuine issues of material fact in dispute in this case. These disputed facts focus primarily on plaintiff's claim that he was terminated because of his "whistle blowing" actions in which he refused truck runs because they were illegal. Whether defendant knew of plaintiff's alleged refusals of these runs is disputed, as is whether plaintiff's termination was in retaliation for his actions in claiming illegality, or motivated at least in part because of such action. The areas of dispute include, but are not limited to the following:

One area of disputed material fact is the legality of the SLC-TF-BOI-SLC run. Defendant claims that the run is legal because it can be accomplished within the 11 hours prescribed by the HOS regulations. In support of this claim, defendant cites the affidavits of two line drivers who claim to have completed this run within the prescribed hours of service. Defendant also relies upon corporate calculations which support the total driving time for the Salt Lake-Boise run, even with the stop and pick up in Twin Falls, as being less than 11 hours.[1]

[1] This corporate calculation was never presented in evidence or as an exhibit to the Court.

Plaintiff disputes this claim and asserts that it is virtually impossible to complete this run within 11 hours. In this regard, plaintiff cites his own driving experience in driving from Salt Lake to Boise and back, as well as his own calculations regarding mileage, relevant speed limits, and delays, in support of his position that to add Twin Falls as a part of the Salt Lake-Boise run would exceed 11 hours driving time.

Another area of disputed fact is whether a reasonable jury could reject defendant's claim that the two people ultimately responsible for the decision to terminate the plaintiff, Jennings and Gegenheimer, had no knowledge of plaintiff's alleged refusals to accept the trucking runs because of his claim of illegality. Plaintiff argues that there are two bases on which a reasonable jury could find that the defendant corporation had knowledge of this defense. First, that his direct supervisor, Mayfield, who knew of the reason for his refusals, likely gave his input and related his knowledge to his superior officers in the conference call in which the termination decision was made. Second, that Mayfield played an important part in firing plaintiff because he ultimately signed the termination letter. Plaintiff argues that these facts are sufficient to establish that a reasonable jury could conclude that Mayfield was acting as an agent of the corporation in accordance with the conference call in which termination of the plaintiff was decided. Then, with full knowledge of plaintiff's claim of illegality, Mayfield signed and delivered the termination notice to plaintiff. Moreover, plaintiff argues that because Mayfield participated in the crucial conference call with Jennings and Gegenheimer shortly before plaintiff's termination, the jury could infer that Mayfield informed Jennings and Gegenheimer of plaintiff's refusals because of the alleged violation of HOS regulations.

Another important area of disputed fact is whether – regardless of implied or actual knowledge of plaintiff's actions – the decision to discharge plaintiff was based on an observed pattern of "aggressive" driving by plaintiff. Plaintiff argues that several facts suggest that this "legitimate business reason" is pretextual. Specifically, plaintiff cites a safe driving certificate awarded to him by the corporation the day before his termination. In addition, plaintiff cites statements in the deposition of the Director of Safety that suggest that none of plaintiff's accidents were indicative of aggressive driving.

Upon review of the record before the Court, it is apparent that genuine issues of material fact are in dispute, which prevents the Court from entering judgment as a matter of law in favor of defendant. Accordingly, it is hereby

ORDERED, that defendant's Motion for Summary Judgment is DENIED, it is

FURTHER ORDERED, that a status and scheduling conference be held on September 13, 2006 at 10:00 a.m.

DATED this 28th day of August, 2006.

J. Thomas Greene

J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

Northern District of Utah

UNITED STATES OF AMERICA
V.
Jose Armando Gonzalez-Vazquez

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX106CR000052-001

USM Number: 28869-081

Robert Hunt
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 USC § 1326	Re-Entry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/24/2006
Date of Imposition of Judgment

Signature of Judge

Paul Cassell — US District Judge
Name of Judge — Title of Judge

8/25/06
Date

DEFENDANT: Jose Armando Gonzalez-Vazquez
CASE NUMBER: DUTX106CR000052-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

18 months

☑ The court makes the following recommendations to the Bureau of Prisons:

Placement in a facility as close to Utah as possible to facilitate family visitation.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Jose Armando Gonzalez-Vazquez
CASE NUMBER: DUTX106CR000052-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Jose Armando Gonzalez-Vazquez
CASE NUMBER: DUTX106CR000052-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not re-enter the United States illegally. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: Jose Armando Gonzalez-Vazquez
CASE NUMBER: DUTX106CR000052-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Jose Armando Gonzalez-Vazquez
CASE NUMBER: DUTX106CR000052-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

TAMMY J. ABNER-TOWNSEND, Plaintiff, vs. JO ANNE B. BARNHART, Commissioner of Social Security, Defendant.	ORDER GRANTING DEFENDANT'S MOTION FOR ENLARGEMENT OF TIME AND DEFENDANT'S MOTION TO WITHDRAW MOTION Case No. 1:06-CV-4 TS

Based upon Defendant's Unopposed Motion for Enlargement of Time and Defendant's unopposed Motion to Withdraw Motion to Withdraw Motion to Remand, it is therefore

ORDERED that Defendant's Unopposed Motion for an Enlargement of Time (Docket No. 11) is GRANTED and Defendant's Response shall be filed no later than September 29, 2006. It is further

ORDERED that Defendant's Unopposed Motion to Withdraw Motion to Remand (Docket No. 12) is GRANTED and Defendant's Motion to Remand (Docket No. 10) is DENIED as MOOT.

DATED August 28th, 2006.

BY THE COURT:

TED STEWART
United States District Judge

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, NORTHERN DIVISION

DAVID H. HENDERSON,	:	
		Court No. 1:06CV 00011DAK
Plaintiff,	:	
vs.	:	
		ORDER
JO ANNE B. BARNHART, Commissioner of Social Security,	:	
	:	Honorable Dale A. Kimball
Defendant.		

Based upon Defendant's Unopposed Motion for Enlargement of Time and good cause appearing therefore,

IT IS HEREBY ORDERED that Defendant may have up to and including September 20, 2006, to respond to Plaintiff's Opening Brief. Plaintiff's Reply Memorandum will then be due October 4, 2006.

DATED this 25th day of August, 2006.

BY THE COURT:

Dale A. Kimball

Honorable Dale A. Kimball
United States District Court

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

SHAWN ALLRED,	)	
	)	
Plaintiff,	)	Case No. 1:06-CV-28 TS
	)	
v.	)	District Judge Ted Stewart
	)	
JENNIFER BARTEL et al.,	)	**O R D E R**
	)	
Defendants.	)	Magistrate Judge Paul Warner

Plaintiff, Shawn Allred, filed a *pro se* prisoner civil rights complaint.[1] The Court has already granted Plaintiff's request to proceed without prepaying the entire filing fee.

Even so, Plaintiff must eventually pay the full $250.00 filing fee required.[2] Plaintiff must start by paying "an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to [his inmate] account . . . or . . . the average monthly balance in [his inmate] account for the 6-month period immediately preceding the filing of the complaint."[3] Under this formula, Plaintiff must pay $13.99. If this initial partial fee is not paid within thirty days, or if Plaintiff has not shown he has no means to pay the initial partial filing fee, the complaint will be dismissed.

Plaintiff must also complete the attached "Consent to Collection of Fees" form and submit the original to the inmate

[1] *See* 42 U.S.C.S. § 1983 (2006).

[2] *See* 28 *id.* § 1915(b)(1).

[3] *Id.*

funds accounting office and a copy to the Court within thirty days so the Court may collect the balance of the entire filing fee Plaintiff owes. Plaintiff is also notified that pursuant to Plaintiff's consent form submitted to this Court, Plaintiff's correctional facility will make monthly payments from Plaintiff's inmate account of twenty percent of the preceding month's income credited to Plaintiff's account.

IT IS THEREFORE ORDERED that:

(1) Although the Court has already granted Plaintiff's application to proceed *in forma pauperis*, Plaintiff must still eventually pay $250.00, the full amount of the filing fee.

(2) Plaintiff must pay an initial partial filing fee of $13.99 within thirty days of the date of this Order, or his complaint will be dismissed.

(3) Plaintiff must make monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account.

(4) Plaintiff shall make the necessary arrangement to give a copy of this Order to the inmate funds accounting office at Plaintiff's correctional facility.

(5) Plaintiff shall complete the consent to collection of fees and submit it to the inmate funds accounting office at

Plaintiff's correctional facility and also submit a copy of the signed consent to this Court within thirty days from the date of this Order, or the complaint will be dismissed.

DATED this 28th day of August, 2006.

BY THE COURT:

PAUL M. WARNER
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Shawn Allred (Case No. 1:06-CV-28 TS), understand that even though the Court has granted my application to proceed *in forma pauperis* and filed my complaint, I must still eventually pay the entire filing fee of $250.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I, Shawn Allred, hereby consent for the appropriate institutional officials to withhold from my inmate account and pay to the court an initial payment of $13.99, which is 20% of the greater of:

(a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or

(b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches $10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the $250.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

_____
Signature of Inmate
Shawn Allred

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

HANDI QUILTER, LLC Plaintiff, vs. JOHN WATTS QUILTING, INC., a California corporation, and the trustee for the JOHN WATTS FAMILY TRUST, an Australian trust, d/b/a JOHN WATTS SEWING MACHINES and d/b/a JOHN WATTS SEWING & PATCHWORK Defendants.	ORDER GRANTING EXTENSION OF TIME TO SERVE DEFENDANTS Case No. 1:06CV00049

This matter is before the court on the plaintiff's request for more time in which to serve process on the defendants. Based on good cause shown by the plaintiff, the court grants the plaintiff's request for an extension [#2]. The plaintiffs have up to and including September 23, 2006, by which to serve the defendants.

DATED this 28th day of August, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

****

EARL L. PAGEL, Plaintiff, vs. BANK UNITED OF TEXAS FSB; LUNDBERG & ASSOCIATES; DEFAULT TO NEW MORTGAGE, INC.; and NEWGATE MORTGAGE, INC., Defendants.	ORDER GRANTING MOTION TO DISCLOSE ADDRESS OF EARL BRAMHALL Case No. 2:00-CV-776 TC Judge Tena Campbell Magistrate Judge David Nuffer

Plaintiff has filed a motion to amend[1] the judgment in this case, and has been unable to serve it. He asks for an order that the Taylorsville postmaster disclose the actual address of Earl Bramhall.[2]

IT IS HEREBY ORDERED that the motion to disclose[3] is GRANTED and the Taylorsville postmaster shall disclose the actual address of Earl Bramhall to Earl Pagel.

IT IS FURTHER ORDERD that Earl Pagel shall effect personal service of the motion to amend on Earl Bramhall as provided in Fed R. Civ. P. 4.

DATED this 26th day of August 2006.

BY THE COURT:

David Nuffer
United States Magistrate Judge

[1] Docket no. 90.
[2] Docket no. 94.
[3] Docket no. 94.

United States Probation Office
for the District of Utah

Report on Offender Under Supervision

Name of Offender: **Versal Michael Gowen** Docket Number: **2:01-CR-00627-001-DAK**

Name of Sentencing Judicial Officer: **Honorable Dale A. Kimball**
United States District Judge

Date of Original Sentence: **August 9, 2002**

Original Offense: **Felon in Possession of a Firearm**

Original Sentence: **51 Months BOP Custody/36 Months Supervised Release**

Type of Supervision: **Supervised Release** Supervision Began: **August 15, 2006**

SUPERVISION SUMMARY

Mr. Gowen initiated supervised release on August 16, 2006, and submitted a presumptive positive urinalysis for methamphetamine. Mr. Gowen reported to the probation office again on August 21, 2006, and admitted to relapsing with methamphetamine on August 18, 2006. Mr. Gowen believes that he is in need of inpatient treatment and will check himself into the Volunteers of America detox facility and remain there until he is able to obtain placement in an inpatient treatment program. The probation office is respectfully requesting that the Court not take any action in this matter and allow Mr. Gowen time to enter into an inpatient treatment program and obtain stabilization.

If the Court desires more information or another course of action, please contact me at 535-4242.

I declare under penalty of perjury that the foregoing is true and correct.

Theresa Del Casale-Merino
United States Probation Officer
August 22, 2006

THE COURT:

[X] Approves the request noted above
[ ] Denies the request noted above
[ ] Other

Honorable Dale A. Kimball
United States District Judge

Date: August 25, 2006

IN THE UNITED STATES COURT
DISTRICT OF UTAH - CENTRAL DIVISION

GARY R. BOOKER Petitioner, vs. UNITED STATES OF AMERICA Respondent,	**ORDER** Case No. 2:05 CV 00149 *related to* 2:02 CR 00509 Judge Dee Benson

Petitioner Gary R. Booker moves the Court to correct his sentence pursuant to Rule 36 of the Federal Rules of Criminal Procedure. The Court, having reviewed all briefing and relevant law, GRANTS Petitioner's motion for the reasons set forth below.

BACKGROUND

On June 11, 2003, Mr. Booker pleaded guilty to one count of Felon in Possession of a Firearm and Ammunition in violation of 18 U.S.C. § 922(g)(1). Mr. Booker was sentenced to 41 months in the custody of the Bureau of Prisons on August 20, 2003. During Mr. Booker's sentencing hearing, counsel for Mr. Booker requested that Mr. Booker's sentence run concurrent to any time served in the state system for violation of his parol, stating:

> And before that we would like to tell the Court that he is here from the State of Utah Bureau of Prisons on a writ, and there is a chance that he might be taken back by the state before he goes to serve his federal sentence. We would ask the Court to order that the sentence run concurrent, just in case he is referred back to the Utah State Prison. There is a chance he might be there for two months or three months to be processed...He has been in jail and in our custody for the past

> ten months. Plus we would ask the Court to recommend that he be given credit for that time, for the time there.

See Transcript of Hearing, August 30, 2003, at 4. The Court consented to counsel's request and ordered that Mr. Booker's sentence run concurrent with any state sentence because his state charges derived from his federal crime. Despite the United States' position that the sentence should run consecutively, the Court stated:

> On that issue I will run it concurrent, and I appreciate your remarks [Assistant U.S. Attorney] Huber. I see it maybe this way. In my experience, the state will look at what I do and it sounds like he only has a problem with the state because he committed this offense which was charged federally. I don't know what the state will do, but it strikes me as more appropriate to take the matter into consideration in my sentence I give him rather than having a consecutive sentence and not knowing if in that process something gets lost or misunderstood by the state authorities. It would be different if he was being charged with a separate crime there in the state system. Then I may think more in terms of a consecutive sentence. I am more comfortable with a concurrent sentence. I will do that.

See Mot. for Correction of Sent., Exhibit B. Despite the Court's order, the Bureau of Prisons ("BOP") has failed to include the ten months Mr. Booker spent in the custody of the state of Utah in Mr. Booker's sentence.

On December 15, 2004, Mr. Booker filed a Motion to Correct the Judgment, requesting that his federal sentence be amended to run concurrently with his state sentence for parole violation that initially triggered the federal prosecution. On January 13, 2005, this Court issued an amended judgment ordering Mr. Booker's federal sentence to run concurrently with his state sentence; however, the BOP still did not include the state time in Mr. Booker's federal sentencing calculation. . On February 22, 2005, Mr. Booker filed the present Motion to Correct Sentence pursuant to Federal Rule of Criminal Procedure 36.

ANALYSIS

Rule 36 provides, "After giving any notice it considers appropriate, the court may at any

time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission." Fed. R. Crim. P. 36. In his motion, Mr. Booker argues that the Bureau of Prisons has failed to note the Court's amended sentence and that the Court has the authority to compute the time to be served pursuant to 18 U.S.C. § 3582(c)(1)(b) and 3583(b).

The United States Supreme Court addressed this issue in *U.S. v. Wilson*, 503 U.S. 329 (1992). In *Wilson*, the Supreme Court decided whether the District Court calculates the credit for time served at the time of sentencing or whether the Attorney General computes it after the defendant has begun to serve his sentence. The Supreme Court ruled that "[Section] 3583(b) does not authorize a district court to compute the credit at sentencing." *Id.*, at 334. The Supreme Court then ruled that "After a district court sentences a federal offender, the Attorney General, through the BOP, has the responsibility for administering the sentence." *Id.*, at 335 (citation omitted). The Attorney General, not the district court, must compute the defendant's credit for time served under § 3583(b). *See Id.*, at 334.

Although the BOP retains the responsibility for administering a sentence, the sentencing court may "adjust concurrent sentences to account for time already served on a related state sentence, if the Bureau of Prisons does not credit the state time served." *See U.S. v. Troches*, 208 F.3d 204, *2 (2nd Cir. 2000) (unpublished). In *Troches*, the defendant was charged both in both the federal and state systems for crimes arising from a conspiracy to distribute cocaine. "At the sentencing, the district court sentenced Troches in accordance with the [plea] agreement and explicitly stated that the sentence would run concurrently with the sentence for the state crime." *Id.*, at *1. Despite the sentence, "the Bureau of Prisons did not credit Troches for the 19 months of state time served." *Id.* The defendant then filed a Section 2255 motion, which the district

court denied. In vacating the district court's decision, the Second Circuit ruled that "the district court does have the authority under the Guidelines to adjust the sentence despite Section 3585." *Id.*

Mr. Booker's case mirrors the facts in *Troches*. Like *Troches*, the crime for which he was incarcerated in the state system derives from the same incident as his federal crime. Like *Troches*, the Court ordered that the federal sentence should run concurrently. This Court even went so far as to acknowledge Mr. Booker's request that his time in state custody be included in the sentence. The Court has already amended the sentence once in an attempt to ensure that its order that Mr. Booker's time served in the state system be credited toward his federal sentence. It is clear to this Court that Mr. Booker's federal sentence must include any and all time served in the Utah state correctional system stemming from this crime.

CONCLUSION

For these reasons, the Court hereby GRANTS Mr. Booker's motion and ORDERS that his sentence be amended to 41 months in federal custody, which time is to include the ten months Mr. Booker was incarcerated in the Utah state system prior to sentencing and any time he spent in the Utah State system between the sentencing hearing and his transfer to a federal prison.

IT IS SO ORDERED.

DATED this 25th day of August, 2006.

Dee Benson
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiffs, vs. ANTHONY DANIEL MARTINEZ, Defendants.	ORDER DENYING MOTION TO AMEND/CORRECT JUDGMENT Case No. 2:02-CR-00744 PGC

On June 19, 2006, defendant Anthony Daniel Martinez moved the court to amend/correct his judgment of imprisonment to include credit for time served [#28]. Mr. Martinez sought an amendment to the court's judgment to include credit for time served in federal custody after his arraignment on federal charges. The court requested briefing from the government, and the government responded by stating that Mr. Martinez had failed to exhaust his administrative remedies and not sought proper review of this claim by the Bureau of Prisons.

The government's statement appears correct in that Mr. Martinez has not yet sought review and correction by the Bureau of Prisons. Indeed, "only the Attorney General through the Bureau of Prisons has the power to grant sentence credit in the first instance."[1] Mr. Martinez

[1] *United States v. Jenkins*, 38 F.3d 1143, 1144 (10th Cir. 1994).

must bring his claims first before the Bureau of Prisons and exhaust his claims there before seeking judicial review with this court.[2] Therefore, until Mr. Martinez first seeks the appropriate remedies from the Bureau of Prisons, and is denied those remedies, the court may not entertain any further motion regarding credit for time served in the federal system after his arraignment.

Given the government's objections and the lack of evidence that Mr. Martinez has exhausted his administrative remedies by first seeking relief from the Bureau of Prisons, the court DENIES Mr. Martinez's motion to amend/correct his sentence. This case is to remain closed.

SO ORDERED.

DATED this 28th day of August, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

[2] *Id*.

MARK R. MOFFAT (#5112)
BROWN, BRADSHAW & MOFFAT
10 West Broadway, Suite 210
Salt Lake City, Utah 84101
Telephone: (801) 532-5297
Facsimile: (801) 532-5298

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413 West Jefferson, Suite 4
Boise, Idaho 83702
Telephone: (208) 331-0610
Facsimile: (208) 336-9133

Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

DOUGLAS STEWART CARTER Petitioner, v. CLINT FRIEL, Warden of the Utah State Prison, Department of Corrections, State of Utah, Respondent.	ORDER EXTENDING TIME TO RESPOND TO RESPONDENT'S RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND RESPONDENT'S RESPONSE TO PETITIONER'S MOTION FOR EVIDENTIARY HEARING Case No. 2:02-CV-326 (Judge Ted Stewart)

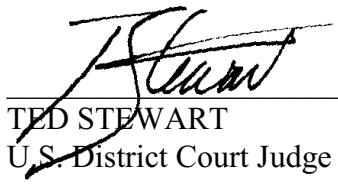
Based upon the motion of petitioner, the stipulation of the parties and good cause appearing,

IT IS HEREBY ORDERED that petitioner shall have until Monday, October 2, 2006, to respond to (1) respondent's Response to Petition for Writ of Habeas Corpus [Docket #179]; and (2) respondent's Response to Petitioner's Motion for Evidentiary Hearing [Docket #178].

IT IS FURTHER ORDERED that the respondent's reply to petitioner's response to the government's request for discovery will also be due on October 2, 2006.

DATED this 28th day of August 2006.

BY THE COURT:



TED STEWART
U.S. District Court Judge

UNITED STATES DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
Julio Martinez

JUDGMENT IN A CRIMINAL CASE
(For **Revocation** of Probation or Supervised Release)

Case Number: DUTX203CR000415-001
USM Number: 10658-081
Robert Hunt
Defendant's Attorney

THE DEFENDANT:

☑ admitted guilt to violation of condition(s) 2 of the term of supervision.

☐ was found in violation of condition(s) _____ after denial of guilt.

The defendant is adjudicated guilty of these violations:

Violation Number	Nature of Violation	Violation Ended
Allegation #2	The defendant admitted he had relapsed using methamphetamine	10/22/2005

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☑ The defendant has not violated condition(s) 1,3,4 and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: 999-99-9364

Defendant's Date of Birth: 8/7/1977

8/24/2006
Date of Imposition of Judgment

Signature of Judge

Defendant's Residence Address:

none

Paul Cassell — US District Judge
Name of Judge — Title of Judge

8/25/06
Date

Defendant's Mailing Address:

none

DEFENDANT: Julio Martinez
CASE NUMBER: DUTX203CR000415-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

8 months

☑ The court makes the following recommendations to the Bureau of Prisons:

Drug Treatment

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Julio Martinez
CASE NUMBER: DUTX203CR000415-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time $115 fee to partially defray the costs of collection and testing

2. The defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the probation office.

3. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

4. The defendant shall not consume alcohol.

5. The defendant shall refrain from association with members of any street gangs.

DEFENDANT: Julio Martinez
CASE NUMBER: DUTX203CR000415-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments set forth on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution or a fine more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Julio Martinez
CASE NUMBER: DUTX203CR000415-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below); or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay.

F ☑ Special instructions regarding the payment of criminal monetary penalties:

Special Assessment Fee is reinstated

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes imprisonment, payment of criminal monetary penalties is be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

U.S. Courts
Case Inquiry Report

Case Number DUTX203CR000415 **Case Title** USA V JULIO MARTINEZ

Summary Party Information:

Party#	Party Name	Debt Type	Total Owed	Total Collected	Total Outstanding
001	JULIO MARTINEZ	SPECIAL PENALTY ASSESSMENT	100.00	100.00	0.00
			100.00	100.00	0.00

Registry Information:

Depository Code	Depository Name	Account Type	Account Code	Depository Total

U.S. Courts
Case Inquiry Report

Detailed Party Information:

Party Number	Party Name
001	JULIO MARTINEZ

Debt Type
SPECIAL PENALTY ASSESSMENT

	Principal	Interest	Penalty	Total
Fund	504100			N/A
Owed	100.00	0.00	0.00	100.00
Collected	100.00	0.00	0.00	100.00
Outstanding	0.00	0.00	0.00	0.00
Paid	0.00	0.00	N/A	0.00
Refunded	0.00	0.00	N/A	0.00
Available	100.00	0.00	N/A	100.00

Totals

	Principal	Interest	Penalty	Total
Owed	100.00	0.00	0.00	100.00
Collected	100.00	0.00	0.00	100.00
Outstanding	0.00	0.00	0.00	0.00
Paid	0.00	0.00	N/A	0.00
Refunded	0.00	0.00	N/A	0.00
Available	100.00	0.00	N/A	100.00

U.S. Courts
Case Inquiry Report

Transaction Information:

Document Type/Number*	Document Date	Accomplished Date	Line Type	Amount	Party/Payee Name	Doc Actn	Trans Type	Fund
Account Number	Debt Type Line#	Debt Type		Payee Line#	Depository Line#			
CT 4681002429	03/14/2005	03/14/2005	Principal	100.00	JULIO MARTINEZ	O	04	504100
DUTX203CR000415-001	1	SPECIAL PENALTY ASSESSMENT						

*** Document Type Legend**

Document Type	Document Type Name
CT	Cash Receipt - CCA Automated

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOE MARTINEZ, Plaintiff, v. DR. RICHARD GARDEN et al., Defendants.	Case No. 2:03-CV-230 PGC O R D E R

Plaintiff, Joe Martinez, an inmate at the Utah State Prison, filed this pro se civil rights suit under 42 U.S.C. § 1983, *see* 42 U.S.C.A. § 1983 (West 2006), and was granted leave to proceed *in forma pauperis* under 28 U.S.C.A. § 1915(b). *See* 28 *id.* § 1915(b). On December 31, 2004, the Court dismissed Plaintiff's complaint concluding that Plaintiff's allegations failed to state a claim on which relief can be granted. On appeal, the Tenth Circuit reversed the dismissal and remanded the case for further proceedings. On January 31, 2006, this case was referred to the magistrate judge under 28 U.S.C. § 636(b)(1)(B). Notice of the magistrate referral was mailed to Plaintiff's address of record but was returned as undeliverable. On July 20, 2006, the magistrate judge entered an order requiring Plaintiff to show cause within thirty days why this case should not be involuntarily dismissed under Rule 41(b) based on Plaintiff's failure to prosecute and failure to keep the Court informed of his current address. That order was also returned as

undeliverable and more than thirty days have now passed.

Accordingly, **IT IS HEREBY ORDERED** that this case is **dismissed** with prejudice under Rule 41(b) based on Plaintiff's failure to prosecute and failure to keep the Court informed of his current address. *See* Fed. R. Civ. P. 41(b).

DATED this 21st day of August, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

United States District Court
for the
District of Utah
August 28, 2006

******MAILING CERTIFICATE OF THE CLERK******

RE: Joe Martinez v. Dr. Richard Garden, et al
2:03cv230 PGC

Inmate Joe Martinez, # 28416
Utah State Prison, Baker Bl.
P.O. Box 250
Draper, UT 84020

Kim Forsgren,

Budge W. Call (5047)
Attorney for Plaintiff
8 East Broadway, Suite 720
Salt Lake City, UT 84111
Telephone: (801) 521-8900
Facsimile: (801) 521-9700

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

MICHAEL GRANIERI, an individual, Plaintiff, vs. BRUCE BURNHAM M.D., RICHARD GARDEN M.D., SYDNEY G. ROBERTS M.D., HOLLY PETERSON R.N. BARBARA MITTEN R.N., SHARON HANSEN R.N., DANIEL SEIGEL R.N., STEVEN FITZGERALD R.N., TRUDEE SANDALL L.P.N., TIMOTHY BARTELL R.N., DANIEL GAPPMAYER R.N., LISA SOPER and JOHN DOES 1-10. Defendants.	)	**WRIT OF HABEAS CORPUS AD TESTIFICANDUM TO *PRODUCE PLAINTIFF MICHAEL* GRANIERI FOR TRIAL** Civil No. 2:03 CV 771 DAK Judge: Dale A. Kimball Magistrate Judge: Brooke C. Wells

---

TO THE UTAH STATE DEPARTMENT OF CORRECTIONS,
C/O WARDEN OF THE UTAH STATE PRISON,
BLUFFDALE, UTAH

GREETINGS:

YOU ARE HEREBY COMMANDED to have the body (person) of **Michael Granieri**, inmate number # 31107, Wasatch Dog Block, 231B, Utah State Prison, Bluffdale, Utah 84020,

detained under your custody, delivered to the custody of the United States Marshal for this District at the United States District Courthouse, 350 South Main Street, Salt Lake City, Utah, where he shall be held until he shall be delivered, under safe and secure conduct before Judge Dale A. Kimball, of the U.S. District Court for the District of Utah, by the 18th day of September, 2006, at 8:30 a.m., in the above captioned civil action.

Michael Granieri shall be kept under the safe and secure custody of the United States Marshal Service until the trial has concluded, and as necessary, shall be remanded back to the custody of the Utah State Department of Corrections, for overnight detention, during the trial of the above-captioned matter.

Immediately upon the conclusion of the trial the United States Marshall Service shall notify you for the return Michael Granieri to the Utah State Prison in Bluffdale, Utah.

IT IS SO ORDERED, this 29th day of August, 2006.

BY THE COURT:

DALE A. KIMBALL
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify on the _____day of August 2006, a true and correct copy of the foregoing **WRIT OF HABEAS CORPUS AD TESTIFICANDUM** was mailed, postage pre-paid, to the following:

William F. Hansen
Assistant Utah Attorney General
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856

_____

MANNY GARCIA, #3799
Attorney for Defendant Cruz-Velasco
150 South 600 East #5-C
Salt Lake City, Utah 84102
Telephone: (801) 322-1616
Fax: (801) 322-1628
Cell: (801)201-5301

IN THE UNITED STATES DISTRICT COURT,

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	ORDER APPOINTING TRANSLATOR
Plaintiff	:	
vs.	:	Case no.2:04CR00798 TS
OSMAR CRUZ-VELASCO, et al	:	Judge TED STEWART
Defendant.	:	

This matter came before the court pursuant to a Motion by the Attorney for the defendant Cruz-Velasco requesting that an interpreter/translator be appointed to assist counsel by translating a significant amount of Discovery from the English language to the Spanish language which will then be provided to the defendant.

IT IS HEREBY ORDERED

That a voucher be issued to Edward Hannan-Canete, a Certified Federal Court Interpreter/Translator for purposes of interpreting

and translating the aforementioned Discovery into the Spanish language. Such services shall not exceed the statutory limit of $1600.00.

BY THE COURT:

Dated this 28th day of August, 2006

DISTRICT COURT JUDGE

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

* *

DIANE MONETA FRITZ,	)	Case No. 2:04CV445
Plaintiff,	)	
vs.	)	O R D E R
SALT LAKE COUNTY JAIL et al.,	)	
Defendants.	)	

* *

Plaintiff, Diane Moneta Fritz, moves the court to reopen the above entitled case because she claims to have never received a copy of the court's March 15, 2005 order, *see* copy attached hereto, requiring her to pay the filing fee in full pursuant to 28 U.S.C. § 1915(g), and because she cannot pay the required fees. The court file does not reflect that the above order was returned as undeliverable. The court notes that her most recent return address is the Salt Lake County Correctional Facility.

Plaintiff offers no facts or law that show she is entitled to the requested relief. As previously noted in the court's March 15, 2005 order, an inmate may not proceed in forma pauperis under 28 U.S.C. § 1915 if the inmate has, at least three or more prior times while incarcerated, brought an action that was dismissed as "frivolous or malicious or fail[ing] to state a claim upon which relief may be granted." Id. at 1915(g). The only exception is if

the inmate can show that he or she is "under imminent danger of serious physical injury." Id.

The court records reflect that Plaintiff has previously filed numerous civil actions with the federal courts, at least several of which have been dismissed as frivolous or failing to state a claim. See Fritz v. Fritz, No. 2:04CV00330 (D. Utah Nov. 18, 2004) (unpublished); Fritz v. Larson, No. 2:04CV00361 (D. Utah June 22, 2004) (unpublished); Fritz v. Olverson, No. 2:04CV00377 (D. Utah June 9, 2004) (unpublished). Therefore, Plaintiff may not maintain this action without paying the filing fee unless she can show an imminent danger of serious physical injury under § 1915(g). She has made no such allegation or showing. Moreover, Plaintiff affirmatively states that she cannot pay the full filing fee.

IT IS THEREFORE ORDERED that Plaintiff Motion to Reopen this case is denied.

DATED this 25th day of August, 2006.

BY THE COURT:

David Sam

DAVID SAM
SENIOR JUDGE
UNITED STATES DISTRICT COURT

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

* *

DIANE MONETA FRITZ,) Case No. 2:04CV445

Plaintiff,)

vs.) O R D E R

SALT LAKE COUNTY JAIL et al.,)

Defendants.)

* *

Plaintiff, Diane Moneta Fritz, filed a pro se prisoner civil rights complaint and applied to proceed in forma pauperis. See 42 U.S.C. § 1983; 28 U.S.C. § 1915. An inmate may not proceed in forma pauperis under 28 U.S.C. § 1915 if the inmate has, at least three or more prior times while incarcerated, brought an action that was dismissed as "frivolous or malicious or fail[ing] to state a claim upon which relief may be granted." Id. at 1915(g). The only exception is if the inmate can show that he or she is "under imminent danger of serious physical injury." Id.

Plaintiff has filed several previous civil actions with the federal courts, several of which have been dismissed as frivolous or failing to state a claim. See Fritz v. Fritz, No. 2:04CV00330 (D. Utah Nov. 18, 2004) (unpublished); Fritz v. Larson, No. 2:04CV00361 (D. Utah June 22, 2004) (unpublished); Fritz v. Olverson, No. 2:04CV00377 (D. Utah June 9, 2004) (unpublished).

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Therefore, Plaintiff may not maintain this action without paying the filing fee unless she can show an imminent danger of serious physical injury under § 1915(g). She has made no such allegation or showing.

IT IS THEREFORE ORDERED that this complaint be dismissed under 28 U.S.C. § 1915(g) with no further notice to Plaintiff unless she pays the full $150.00 filing fee within ten days from the date of this Order.

DATED this 15th day of March, 2005.

BY THE COURT:

DAVID SAM
SENIOR JUDGE
UNITED STATES DISTRICT COURT

blk

United States District Court
for the
District of Utah
March 15, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00445

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Diane M. Fritz
UTAH STATE HOSPITAL
1300 R CENTER
PO BOX 270
PROVO, UT 84603-0270

2:04CV445
DS

Inmate Name [illegible]
Inmate #
Inmate SO # [illegible]
Location [illegible]
Salt Lake County Correctional Facility
3415 South 900 West
Salt Lake City, UT 84119

SALT LAKE CITY
UT 841 4 T
16 AUG 2006 PM

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-4101-2180

#4101/2180

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

FARRELL J. BOUCK, Plaintiff, vs. UTAH DEPARTMENT OF TRANSPORTATION, Defendant.	ORDER AND MEMORANDUM DECISION Case No. 2:04-CV-554 TC

Farrell Bouck is a former employee (engineering technician) of the Utah Department of Transportation (UDOT). He claims that UDOT, in violation of Title VII of the Civil Rights Act, terminated his employment because he filed an affidavit in support of a co-worker's national origin discrimination claim against UDOT. He also claims that he is mentally disabled and that UDOT violated the ADA and the Rehabilitation Act of 1973 by failing to accommodate his disability. Underlying both of Bouck's claims (retaliation and disability discrimination) is the assertion that UDOT created a hostile environment that resulted in constructive discharge.

UDOT has filed a motion for summary judgment. UDOT asserts that Bouck cannot establish a prima facie case of retaliation because there is no evidence that his supervisors knew at the relevant times that Bouck filed an affidavit in support of co-worker Saiid Jirsa's discrimination claim. As for Bouck's disability claims, UDOT contends that Bouck's ADA claim (brought under ADA Title I, 42 U.S.C. §§ 12112 and 12117) is barred by the Eleventh

Amendment. Alternatively, UDOT asserts that Bouck is not disabled and is not a "qualified individual."

The court finds that Bouck is not disabled and is not a qualified individual under the Rehabilitation Act. Further, the court finds that Bouck has not rebutted UDOT's reasons for Bouck's discharge from employment and so UDOT is entitled to summary judgment on Bouck's Title VII retaliation claim. Accordingly, UDOT's Motion for Summary Judgment is GRANTED.

UDOT has also filed a Motion to Strike Affidavit of Saiid Jirsa. UDOT's Motion to Strike is DENIED AS MOOT.

I. FACTUAL BACKGROUND

In the fall of 2001, Bouck began having conflicts with his new supervisor, Hugh Boyle. In August 2002, Bouck filed an affidavit in support of a discrimination claim filed by Bouck's friend and co-worker, Saiid Jirsa. Alan Lake, the director of UDOT's human resources department, received a copy of the affidavit. But Lake did not disclose the existence or the contents of the affidavit to any of Bouck's supervisors. Bouck's three supervisors were Boyle,[1] Boyd Wheeler,[2] and Dave Nazare.[3] In the meantime, Bouck continued to have conflicts at work (he alleges that he received especially harsh treatment from Boyle after he filed the supporting affidavit), and he suffered from anxiety, panic attacks, depression, and insomnia.

Apparently Bouck's psychological disorders (aggravated by Boyle's harsh treatment of

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[1]Boyle, a team leader, was Bouck's first level (that is, primary) supervisor.

[2]Wheeler was Bouck's second level supervisor.

[3]Nazare, Chief of the Structures Division where Bouck worked, was Bouck's third level supervisor.

him) prevented him from doing his job. On June 27, 2003, Bouck took extended sick leave. In July 2003, Bouck filed a grievance with the Career Service Review Board. That was the first time Bouck's supervisors learned of the existence and contents of the affidavit.[4]

On September 1, 2003, Bouck was placed on long-term disability leave (he was still a UDOT employee although he had not actually worked since June 27, 2003). In February 2004, UDOT notified Bouck of a one-year limitation on his long-term disability leave, which required that he return to work by June 26, 2004, to avoid being released from employment. See Utah Admin. Code R477-7-17(3). Bouck did not return to work. In May 2004, UDOT once again reminded Bouck of the one-year limitation. But Bouck still did not return to work.

Instead, he requested an accommodation from UDOT. He asked that UDOT either transfer him to another division or extend the one-year limitation under the policy exception to the administrative rule. UDOT denied Bouck's request. And, after a meeting between Bouck, Bouck's attorney, HR director Lake, and Jim McMinimee (UDOT Director of Project Development), McMinimee sent a recommendation to John Njord, UDOT Executive Director, that Bouck's employment be terminated. Njord, the only individual at UDOT authorized to make decisions regarding a career service employee's status, terminated Bouck's employment, effective August 13, 2004. In the meantime, Bouck applied for, and received, long-term disability benefits.

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[4]As described in more detail later in this Order, Bouck unsuccessfully attempts to create a genuine dispute of material fact regarding the issue of whether his supervisors knew of the affidavit at the time they allegedly created a hostile work environment.

III. UDOT'S MOTION FOR SUMMARY JUDGMENT

In its Motion for Summary Judgment, UDOT challenges both the legal and the factual validity of Bouck's two claims: retaliation and disability discrimination claim. Federal Rule of Civil Procedure 56 permits the entry of summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-51 (1986); Adler v. Wal-Mart Stores, Inc., 144 F.3d 664, 670 (10th Cir. 1998). Although UDOT bears the burden of demonstrating that there are no issues of material fact, Bouck must set forth specific facts to establish that there is a genuine issue for trial. Celotex, 477 U.S. at 325. "An issue of material fact is 'genuine' if a 'reasonably jury could return a verdict for the nonmoving party.'" Universal Money Ctrs., Inc. v. AT&T Co., 22 F.3d 1527, 1529 (10th Cir. 1994) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). The court must "examine the factual record and [make] reasonable inferences therefrom in the light most favorable to the party opposing summary judgment." Applied Genetics Int'l, Inc. v. First Affiliated Sec., Inc., 912 F.2d 1238, 1241 (10th Cir. 1990).

A. Bouck's Retaliation Claim

Bouck brings his retaliation claim under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-3(a), which reads, in relevant part:

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because [the employee] has opposed any practice made an unlawful employment practice by this subchapter, or because [the

> employee] has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

To establish a prima facie case of retaliation, Bouck "must demonstrate (1) that he engaged in protected opposition to discrimination, (2) that a reasonable employee would have found the challenged action materially adverse, and (3) that a causal connection existed between the protected activity and the materially adverse action." Argo v. Blue Cross & Blue Shield of Kansas, Inc., 452 F.3d 1193, 1202 (10th Cir. 2006) (citing the recent United States Supreme Court decision in Burlington N. & Santa Fe Ry. Co. v. White, ___ U.S. ___, 126 S. Ct. 2405, 2414-15 (2006)). If Bouck establishes a prima facie case, then the burden shifts to UDOT to articulate a legitimate, nondiscriminatory reason for the discharge. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 800-07 (1973) (holding that when plaintiff relies on circumstantial evidence to demonstrate employment discrimination, and plaintiff establishes prima facie case, burden of production shifts to defendant to articulate legitimate, nondiscriminatory reason for adverse action); Argo, 452 F.3d at 1202 (applying McDonnell Douglas burden shifting framework in Title VII retaliation case). Then, if UDOT meets its burden of production, Bouck, in order to survive summary judgment, must present evidence that UDOT's proffered reason was pretext for a retaliatory motive. McDonnell Douglas, 411 U.S. at 800-07.

> To show pretext, Mr. [Bouck] must produce evidence of "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons."

Argo, 452 F.3d at 1203 (internal citations omitted) (quoting Morgan v. Hilti, Inc., 108 F.3d 1319, 1323 (10th Cir. 1997)).

Bouck asserts that UDOT's adverse action consisted of creating a hostile work environment right after he filed his affidavit and that the hostile work environment resulted in constructive discharge. Specifically, he contends that the hostile supervisory environment allegedly created by Boyle, Wheeler, and Nazare caused him to take an extended leave of absence which, by default, resulted in loss of his job.

UDOT does not dispute, for purposes of its motion, that Bouck's filing of the affidavit in support of co-worker Saiid Jirsa's discrimination claim was a protected activity and that the alleged hostile work environment purportedly resulting in discharge from employment would constitute a materially adverse action. Rather, UDOT focuses on the third prong, contending that there is no evidence of a causal connection between the protected activity (Bouck's filing of the affidavit) and the materially adverse action (Bouck's discharge from employment). "[A] causal connection is established where the plaintiff presents 'evidence of circumstances that justify an inference of retaliatory motive, such as protected conduct closely followed by adverse action.'" MacKenzie v. City & County of Denver, 414 F.3d 1266, 1279 (10th Cir. 2005) (internal citation omitted) (quoting Bullington v. United Air Lines, Inc., 186 F.3d 1301, 1320)). But to establish a causal connection, Bouck must show that the person who took the adverse action against Bouck knew at the time of the adverse action that Bouck filed the affidavit. Williams v. Rice, 983 F.2d 177, 181 (10th Cir. 1993). The evidence strongly suggests that Bouck's direct supervisors did not know of the affidavit at the time the alleged hostile environment began and so there would be no causal connection.

But even assuming that Bouck has established a prima facie case (for example, by presenting evidence of temporal proximity of supervisors' harsh treatment of Bouck to Bouck's

filing of the affidavit),[5] UDOT presents a legitimate reason for Bouck's discharge. UDOT asserts that it discharged Bouck from employment because Utah Administrative Rule 477-7 provides that "[i]f an employee [on long term disability leave] is unable to return to work within one year after the last day worked, the employee shall be separated from state employment." Utah Admin. Rule 477-7-17(3)(c) (2005).[6] And UDOT kept Bouck's job position open for longer than one year (he was granted extended leave from June 27, 2003, to August 13, 2004).

Given UDOT's proffer of a legitimate reason, the burden shifted back to Bouck under McDonnell Douglas to present evidence that his former supervisors are lying about their knowledge and that UDOT's reason for terminating his employment (that the one-year extended leave period had expired) was pretext for retaliation. As noted above, to show pretext, Bouck

> must produce evidence of "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons."

Argo, 452 F.3d at 1203 (internal citations omitted) (quoting Morgan v. Hilti, Inc., 108 F.3d 1319, 1323 (10th Cir. 1997)). He has not met his burden.

Bouck contends that UDOT's reason is pretext because (1) the individuals who allegedly

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[5]See, e.g., Argo v. Blue Cross & Blue Shield of Kansas, Inc., 452 F.3d 1193, 1202 (10th Cir. 2006) (holding that "close temporal proximity" between protected activity and adverse action was "sufficient to allow an inference that a causal connection existed").

[6]Bouck points to the "Policy Exceptions" provision of Utah Administrative Rule 477-7, suggesting that UDOT should have pursued a policy exception on his behalf. The exception provides that "[t]he Executive Director [of Utah's Department of Human Resources Management] may authorize exceptions to the provisions of this rule consistent with [fair employment practices set forth in Utah Admin. Rule] R477-2-3(1)." Utah Admin. Rule 477-7-19 (2005). Bouck does not cite to anything that required UDOT to pursue this discretionary policy exception.

harassed him, who refused his accommodation request for re-assignment or extension of leave, and who actually terminated his employment after expiration of the one-year leave period knew about the affidavit he filed in support of Jirsa; (2) UDOT unreasonably denied his request to transfer to another department or change his supervisor; and (3) UDOT unreasonably denied his request for an indeterminate extension of the one-year leave period when UDOT had the discretion to request an exception to the administrative rule. None of Bouck's proffered reasons would allow a reasonable jury to find UDOT's explanation unworthy of credence.

First, there is no evidence that his direct supervisors (principally Boyle, but also Wheeler and Nazare) knew of the affidavit at the time Bouck suffered from the allegedly hostile work environment. The sworn deposition and affidavit testimony supports the conclusion that Alan Lake did not disclose the existence or contents of the affidavit to any of Bouck's supervisors. Similarly, the sworn deposition and affidavit testimony supports the conclusion that Boyle, Wheeler, and Nazare had no knowledge of the affidavit until after Bouck had worked his last day at UDOT (that is, after the allegedly hostile work environment had been created). Yet Bouck suggests that a jury could reasonably infer that

> Alan Lake would have conveyed the fact of Mr. Bouck's support to Agency in-house attorney Jim Beadles. . . . It is also reasonable to infer that Mr. Beadles would have discussed the same with Mr. Nazare, Mr. Wheeler and Mr. Boyle. Note the lack of any Affidavit from Mr. Beadles or a Mr. J.D. Reynolds, UDOT attorney at Attorney General's office.

(Pl.'s Opp'n Mem. at 10.) Bouck also says that a jury reasonably could infer that Jirsa's co-workers who had knowledge of the affidavit communicated such information to Bouck's supervisors. But Bouck does not present evidence to support these inferences. Bouck relies solely on the affidavit testimony of Saiid Jirsa to rebut the express denials of Bouck's

supervisors. Specifically, Bouck relies on Jirsa's statement that Jirsa

> asked three other UDOT employees, Stephen Peterson, Vida Becklou and Kwan Po Lee, for affidavits [of support]. I shared with these three employees that Farrell Bouck, Biao [Chang] and Clair [Nelson] had provided affidavits to me. My impression was that these three employees are very talkative. They would often act as conduits for information from employees to management and from management to employees.

(Revised Aff. of Saiid Jirsa ¶ 17, attached to Dkt # 31.) Based on Jirsa's unsupported inference about purported office gossip, Bouck leaps to the conclusion that his supervisors did know about Bouck's filing of the supporting affidavit and consequently retaliated. Bouck's conclusion is simply not reasonable. He has not presented reliable evidence creating a genuine dispute about the timing of Bouck's supervisors' knowledge of the affidavit. See Argo v. Blue Cross & Blue Shield, 452 F.3d 1193, 1200 (10th Cir. 2006) ("[A]t the summary judgment stage, 'statements of mere belief' in an affidavit must be disregarded."); MacKenzie v. City and County of Denver, 414 F.3d 1266, 1273 (10th Cir. 2005) ("Unsupported conclusory allegations . . . do not create an issue of fact."). In short, nothing in the record presents any genuine dispute concerning the sworn testimony of Lake, Boyle, Wheeler, and Nazare. All Bouck presents is speculation. His immediate supervisors said they did not know about the affidavit, and there is no evidence from Bouck to the contrary.

As for McMinimee, who handled Bouck's requests for transfer or extension of leave, and Njord, who made the decision to terminate Bouck's employment, their knowledge of Bouck's affidavit does not create a reasonable inference that their motives were retaliatory. Bouck filed the affidavit in August 2002, approximately two years before either McMinimee or Njord acted. Given the length of time during which these events occurred, Bouck's contention that "Mr.

Nazare, Mr. Wheeler and Mr. Boyle, including Mr. McMinimee, in tandem, pursued a variety of strategies which orchestrated Mr. Bouck out of UDOT involuntarily" (Pl.'s Opp'n Mem. at 17) is simply not reasonable. See, e.g., MacKenzie, 414 F.3d at 1279-80 (holding, in summary judgment context, that evidence of protected activity occurring five months before alleged retaliatory conduct was insufficient, standing alone, to establish causation).

As for UDOT's denial of Bouck's request for a transfer or extension of leave, no admissible evidence contradicts UDOT's assertion that UDOT reviewed Bouck's requests and "found them impractical" for valid reasons. (UDOT's Mem. in Support at 17 (citing Aug. 4, 2004 Letter of Jim McMinimee) (noting that UDOT did not have any available positions at that time that would fit Bouck's skills, interests and abilities, and noting that extension of leave would not be granted for articulated policy reasons).)

For all the foregoing reasons, UDOT is entitled to summary judgment on Bouck's retaliation claim.

B. Bouck's Disability Discrimination Claim

Bouck asserts disability discrimination claims under both the Americans with Disabilities Act (ADA),[7] and the Rehabilitation Act of 1973 (the Act).[8] He seeks monetary damages. He does not seek injunctive relief. The threshold issue is whether the court has subject matter jurisdiction (that is, whether Bouck's claim is barred by Eleventh Amendment sovereign immunity granted to the State).

[7]Bouck asserts a claim under 42 U.S.C. §§ 12112 and 12117(a).

[8]Bouck asserts a claim under Section 504 of the Act, codified at 29 U.S.C. § 794.

1. UDOT's Eleventh Amendment Defense

Bouck's disability claims under ADA Title I are barred by the Eleventh Amendment because he seeks monetary damages from an agency of the State of Utah. Board of Trustees of University of Alabama v. Garrett, 531 U.S. 356, 360, 374 n.9 (2001). Bouck concedes this point in his opposition brief. (See Pl.'s Mem. in Opp'n at 19-20.) But Bouck contends that the Rehabilitation Act provides a right of action against UDOT because UDOT receives federal funds and so has waived its Eleventh Amendment sovereign immunity.

The statutory text and case law support Bouck's position. See 42 U.S.C. § 2000d-7(a)(1) ("A state shall not be immune . . . from suit in Federal court for a violation of the Rehabilitation Act of 1973."); 29 U.S.C. § 794 (providing that "[n]o otherwise qualified individual in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ."); Brockman v. Wyoming Dep't of Family Servs., 342 F.3d 1159, 1167-68 (10th Cir. 2003) (stating that, "'by accepting federal financial assistance as specified in 42 U.S.C. § 2000d-7, states and state entities waive sovereign immunity from suit'" under Section 504) (quoting Robinson v. Kansas, 295 F.3d 1183, 1189-90 (10th Cir. 2002)). UDOT apparently concedes this point because UDOT, in its Reply Memorandum, does not address, much less challenge, Bouck's assertion. Instead, UDOT evaluates Bouck's disability claims on the merits under the Rehabilitation Act.

Accordingly, the court has subject matter jurisdiction over Bouck's disability claim as brought under the Rehabilitation Act, which is very similar, if not identical, to the ADA's provision barring employment discrimination on the basis of a disability.

2. The Merits of Bouck's Disability Claims

Bouck asserts a claim against UDOT under Section 504 of the Rehabilitation Act, which reads in relevant part as follows:

> No otherwise qualified individual in the United States, as defined in section 705(2) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program o

29 U.S.C. § 794(a). "This statute makes available a private right of action to qualified individuals who have been subjected to employment discrimination by a program or activity receiving federal financial assistance." Schrader v. Fred A. Ray, M.D., P.C., 296 F.3d 968, 971 (10th Cir. 2002). The Rehabilitation Act incorporates the standards of the ADA. Id. at 969 (citing 29 U.S.C. § 794(d)).[9] To establish a prima facie case of employment of discrimination under the Rehabilitation Act, Bouck must present evidence that he is disabled, that he is "otherwise qualified" to perform the essential functions of his job with UDOT, that UDOT receives federal financial assistance, and that UDOT discriminated against Bouck based on his disability. MacKenzie v. City and County of Denver, 414 F.3d 1266, 1274 (10th Cir. 2005); Schrader, 296 F.3d at 971.

Bouck claims that UDOT discriminated against him based on his disability by failing to

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[9]Section 794(d) reads as follows:

> The standards used to determine whether this section [Section 504] has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

accommodate his disability (a mental impairment) and then terminating his employment. Specifically, Bouck contends that UDOT should have transferred him out of the Structures Division to get him away from the supervisor with whom he could not work. Bouck alternatively contends that UDOT should have extended his leave without pay for some period longer than the one year provided by the administrative rule in order to provide him an opportunity to recover and return to work.

UDOT contends that Bouck has not presented evidence that he is disabled, or that he is otherwise qualified to perform his job with or without reasonable accommodation. UDOT notes that the first accommodation sought by Bouck demonstrates that he has no disability, and the second accommodation demonstrates that he is not a qualified individual.

a. Bouck is not disabled.

Under the Act, an individual with a disability is one who "has a physical or mental impairment which substantially limits one or more of such person's major life activities." 29 U.S.C. § 705(20)(B)(i). The question of whether Bouck is disabled is a question of law. Poindexter v. Atchison, Topeka & Santa Fe Ry. Co., 168 F.3d 1228, 1230 (10th Cir. 1999). "To evaluate whether a claimant is disabled from working, we consider 'whether the claimant is unable to perform the variety of tasks central to most people's daily lives, not whether the claimant is unable to perform the tasks associated with [his] specific job.'" McGeshick v. Principi, 357 F.3d 1146, 1150 (10th Cir. 2004).

UDOT assumes for the sake of argument that Bouck has an impairment. But UDOT asserts that, contrary to Bouck's claim, Bouck's impairment does not substantially limit the major life activity of working. UDOT further asserts that any other major life activity alleged by

Bouck is not relevant because the accommodations Bouck requested are not related to the other claimed major life activities.

Bouck admits that a transfer to a different job under a different supervisor would have solved the problem. This means he did not have an impairment which substantially limited one or more major life activities. See McGeshick, 357 F.3d at 1149 ("A substantial limitation in a major life activity is having general restrictions on the performance of that activity in life as a whole, not merely restrictions on the ability to perform a specific job."); Nuzum v. Ozark Automotive Distributors, Inc., 432 F.3d 839, 848 (8th Cir. 2005) ("Ability to do another job of the same general class is inconsistent with a substantial limitation on the major life activity of working."); Siemon v. AT&T Corp., 117 F.3d 1173, 1175 (10th Cir. 1997) ("The inability to perform a 'single particular job' because of a conflict with a supervisor does not constitute 'a substantial limitation in the major life activity of working.'"). Further, the "workplace accommodation [requested] must be related to the limitation that rendered the person disabled." Nuzum, 432 F.3d at 848. Consequently, all of the other major life activities alleged by Bouck (for example, sleeping, eating, thinking, and interacting with others) are not relevant to the analysis because the only accommodations he requested address his ability to work. In short, if a transfer would solve the problem and allow him to return to work, he has not suffered a disability because he has not been barred from a broad range of job opportunities but only the single job of working for the unfriendly supervisor. And the other major life activities that had allegedly been impacted by his mental state would not need to be accommodated.

b. Bouck is not a qualified individual.

Not only must Bouck be disabled in order to recover under the Act, but he must be a "qualified individual." That is, he must be able, with or without reasonable accommodation, to perform the essential functions of his job. Davidson v. America Online, Inc., 337 F.3d 1179, 1190 (10th Cir. 2003); Brockman, 342 F.3d at 1168.

Bouck admits that he could not work beginning in June 2003 (thus his claim for long-term disability benefits). That admission is inconsistent with his assertion that he could have performed an essential function of his job (with or without a reasonable accommodation) at the time he stopped working or at the time UDOT terminated his employee status. See Slomcenski v. Citibank, N.A., 432 F.3d 1271, 1280 (11th Cir. 2005) ("Because the ADA reserves its protections for individuals still able to perform the essential functions of a job, albeit perhaps with reasonable accommodation, a plaintiff who is totally disabled and unable to work at all is precluded from suing for discrimination thereunder.")

And even assuming that by June 2003 (when he stopped working) or June 2004 (when his one-year leave expired) he could have worked with an accommodation, the accommodations he requested were unreasonable. In order to be "qualified," a person must be able to satisfy all the conditions of employment with or without a reasonable accommodation. Bouck's accommodation request for an extension of the long-term leave deadline was unreasonable. Holding a person's job open for an indeterminate amount of time (after holding the job open for fourteen months) to see whether he may be able to return to work is not a reasonable

accommodation.[10] And Bouck's request for a transfer or a change in the line of reporting (that is, his request for a new supervisor) is also unreasonable in the sense that it would only address a conflict with a particular supervisor rather than a substantial limitation on a major life activity (as noted above).

Bouck was not a qualified individual with a disability and UDOT had no obligation to accommodate him. Accordingly, UDOT is entitled to summary judgment on Bouck's Rehabilitation Act disability discrimination claim.

ORDER

For the foregoing reasons, UDOT is entitled to summary judgment. Accordingly, UDOT's Motion for Summary Judgment is GRANTED. UDOT's Motion to Strike the Affidavit of Saiid Jirsa is DENIED AS MOOT.

DATED this 28th day of August, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

[10]Arguably, Bouck's request for an extension of the long-term leave deadline is not so much a request for accommodation as it is a request for reprieve from the requirement that Bouck work to maintain his job status.

FILED
U.S. DISTRICT COURT
2006 AUG 25 A 10: 56
DISTRICT OF UTAH
BY: DEPUTY CLERK

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

* *

BADGER DAYLIGHTING CORP., Plaintiff and Counterclaim Defendant, v. SCOTT V. MERKLEY ET AL., Defendants and Counterclaim Plaintiffs.	Case No. 2:04cv01074 DS ORDER OF ADMINISTRATIVE CLOSURE

* *

The parties in this case have represented to the court that a settlement agreement has been reached, and they anticipate there will be no further litigation. Therefore, for administrative purposes in managing the court's pending docket, the court hereby orders that the case be closed.

This case may be reactivated, however, upon written request by counsel for any party. Such request, when sent to all parties of record and granted by the court, shall serve to revive the case without the necessity of refiling documents or submitting additional filing fees.

DATED this 25th day of August, 2006.

BY THE COURT:

David Sam

DAVID SAM
SENIOR JUDGE
UNITED STATES. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

DONALD L. ARCHULETA,	)	
	)	
Plaintiff,	)	Case No. 2:04-CV-1078 TC
	)	
v.	)	District Judge Tena Campbell
	)	
CLINT FRIEL et al.,	)	**O R D E R**
	)	
Defendants.	)	Magistrate Judge Samuel Alba

Plaintiff, inmate Donald Archuleta, has filed a motion for "Ex Parte Communication." His supporting affidavit details allegations about the suicide of a fellow inmate. These allegations seem to have no relationship to the claims Plaintiff raises in his complaint here. Further, Plaintiff notes in his affidavit, "This was sent to . . . the Utah Attorney General's Office." Essentially, then, Plaintiff has already shared his information with the very office that will represent Defendants if the Court ends up ordering service of the complaint after screening. *See* 28 U.S.C.S. § 1915A (2006). This appears to defeat the purpose of a motion for *ex parte* communication.

IT IS THEREFORE ORDERED that Plaintiff's motion for *ex parte* communication is denied. (*See* File Entry # 22.)

DATED this 28th day of August, 2006.

BY THE COURT:

SAMUEL ALBA
U. S. Magistrate Judge

TIM DALTON DUNN (Utah Bar No. 0936)
JOHN WARREN MAY (Utah Bar No. 7412)
GERRY B. HOLMAN (Utah Bar No. 6891)
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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE STATE OF UTAH, CENTRAL DIVISION

STEPHEN A. URIE and ELAINE URIE, dba URIE TRUCKING COMPANY, Plaintiffs, vs. WOLVERINE DRILLING, INC., a North Dakota Corporation, ENCANA OIL & GAS (USA) INC., a Colorado Corporation, FIREMAN'S FUND INSURANCE COMPANY, a California Corporation, and DONALD STANLEY NEILSON, an Individual, and DAVID J. WITKOWSKI, an individual, Defendants.	**ORDER OF DISMISSAL WITH PREJUDICE OF CLAIMS AGAINST DEFENDANT DONALD STANLEY NEILSON** Civil No. 2:04CV01084 DAK Judge Dale A. Kimball

THE COURT, having considered the Plaintiffs' and Defendants Donald Stanley Neilson, et al. Stipulation and Motion for Dismissal With Prejudice, having reviewed the file in this matter and good cause appearing therefore, hereby:

ORDERS that all claims in this matter against Defendant Donald Stanley Neilson, and as to Wolverine Drilling, Inc., a North Dakota Corporation, EnCana Oil & Gas (USA) Inc., a Colorado corporation, and Fireman's Fund Insurance Company, a California corporation, as they relate to Donald Stanley Neilson are hereby **DISMISSED, with prejudice**, each party to bear its own costs and fees incurred herein. This Order does not apply to the claims of the Plaintiffs as to the Defendants David Witkowski, Wolverine Drilling, Inc., a North Dakota corporation, EnCana Oil & Gas (USA) Inc., a Colorado corporation, Fireman's Fund Insurance Company, a California corporation, as they relate to the claims related to David J. Witkowski.

SO ORDERED this 23rd day of August 2006.

BY THE COURT:

HONORABLE DALE A. KIMBALL
Federal District Court Judge

APPROVED this 17 day of August 2006.

ROBERT J. DEBRY & ASSOCIATES

George T. Waddoups, Esq.
Attorneys for Defendant Donald Stanley Neilson

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. MIGUEL ANGEL LOPEZ-ROMERO a/k/a EDUARDO MORENO, et al., Defendant.	/ / / / /	**FINDINGS AND ORDER OF CONTINUANCE AND WAIVER OF TIME** Case No. 2:05-CR-0028TS

This matter came on for a change of plea hearing on August 10, 2006. The Defendant, Miguel Angel Lopez-Romero, was present with his attorney, Deirdre A. Gorman, and the government was represented by Veda Travis, Assistant United States Attorney.

BASED UPON the Defendant's oral Motion to Continue made at the time of the change of plea hearing, and good cause appearing, the court makes the following:

FINDINGS

1. The government has extended a plea negotiation to the Defendant.

2. The Defendant has requested additional time to consider this plea offer.

3. The government has stated that they have, in good faith, relied upon the Defendant entering into the proposed plea offer.

4. The court finds that the Defendant waives his right to a speedy trial and all rights under the Speedy Trial Act time frame will be tolled.

5. The court finds that the ends of justice will be served in granting this continuance, and a continuance outweighs the best interest of the public and the Defendant in a speedy trial, pursuant to Title 18 U.S.C. Sec. 3161(A)(a)(8)(b)(I)(ii)(iv).

6. The court finds that a failure to grant a continuance would unreasonably deny counsel for the defendant the reasonable time necessary for effective preparation, taking into account the exercise of due diligence as defense counsel needs additional and adequate time to explain to the Defendant his rights in this matter and review additional discovery with him so Defendant can determine whether or not to enter into a plea negotiation.

BASED UPON THE FOREGOING, IT IS HEREBY ORDERED that the Defendant's change of plea is hereby continued to Tuesday, September 26, 2006 at 3:00 p.m.

If the matter is not resolved by a change of plea on this date, then a jury trial is scheduled for all remaining Defendants in this matter for January 8, 2007 at 8:30 a.m.

DATED this 28th day of August, 2006.

BY THE COURT:

TED STEWART
United States District Court Judge

UNITED STATES DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
Ramon Sanchez-Diaz

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX205CR000411-001

USM Number: 12708-081

Randy Ludlow
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the Indictment.

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §841(a)(1) & 21 U.S.C. §841(b)(1)(A)	Possession of Methamphetamine with Intent to Distribute		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☑ Count(s) 2 ☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/24/2006
Date ~~of Imposition~~ of Judgment

Dale A. Kimball
Signature of Judge

Dale A. Kimball — U.S. District Judge
Name of Judge — Title of Judge

August 25, 2006
Date

DEFENDANT: Ramon Sanchez-Diaz
CASE NUMBER: DUTX205CR000411-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

87 months.

☑ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be sent to a federal facility in California to facilitate family visitation.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Ramon Sanchez-Diaz
CASE NUMBER: DUTX205CR000411-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

60 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States. If the defendant returns to the United States during the period of supervision, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: Ramon Sanchez-Diaz
CASE NUMBER: DUTX205CR000411-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until ______. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	$ 0.00	$ 0.00	

☐ Restitution amount ordered pursuant to plea agreement $ ______________

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Ramon Sanchez-Diaz
CASE NUMBER: DUTX205CR000411-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 1 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. JOSE HONORIO FLORES-ORTEGA, Defendant.	ORDER SCHEDULING BRIEFING Case No. 2:05-CR-672 TS

The government having filed a Motion to Reconsider, it is therefore

ORDERED that Defendant shall file a response by September 8, 2006.

DATED August 28th, 2006.

BY THE COURT:

TED STEWART
United States District Judge

UNITED STATES DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
Jose Ariel Ramon-Felix

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX205CR000736-002

USM Number: 13054-081

Lee Rasmussen
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 and 2 of the Indictment.

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §841(a)(1)	Possession of Methamphetamine with Intent to Distribute		1
18 U.S.C. §2	Aiding and Abetting		1
21 U.S.C. §841(a)(1)	Possession of Cocaine with Intent to Distribute and Aiding		2

The defendant is sentenced as provided in pages 2 through 11 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☑ Count(s) 3 and 4 ☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/23/2006
Date of Imposition of Judgment

Dale A. Kimball
Signature of Judge

Dale A. Kimball — U.S. District Judge
Name of Judge — Title of Judge

August 25, 2006
Date

DEFENDANT: Jose Ariel Ramon-Felix
CASE NUMBER: DUTX205CR000736-002

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 2	and Abetting		2

DEFENDANT: Jose Ariel Ramon-Felix
CASE NUMBER: DUTX205CR000736-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

46 months.

☑ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be incarcerated in a facility in Arizona to facilitate family visitation.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Jose Ariel Ramon-Felix
CASE NUMBER: DUTX205CR000736-002

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

60 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☑ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Jose Ariel Ramon-Felix
CASE NUMBER: DUTX205CR000736-002

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally re-enter the USA. In the event that the defendant should be released from confinement without being deported, he shall contact the U. S. Probation Office in the district of release within 72 hours of release. If the defendant returns to the USA during the period of supervision after being deported, he is instructed to contact the U. S. Probation Office in the District of Utah within 72 hours of arrival in the USA.

DEFENDANT: Jose Ariel Ramon-Felix
CASE NUMBER: DUTX205CR000736-002

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 200.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ *the interest requirement is waived for the* ☐ *fine* ☐ *restitution.*

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Jose Ariel Ramon-Felix
CASE NUMBER: DUTX205CR000736-002

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 200.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 8 - 11
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
Abel Sanchez

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX205CR000849-001

USM Number: 62646-097

Vanessa Ramos
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 3 of the Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 922(a)(1)(A)	Interstate Trafficking of Firearms		3

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☑ Count(s) 1, 2 ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/23/2006
Date of Imposition of Judgment

Signature of Judge

Paul Cassell — US District Judge
Name of Judge — Title of Judge

8/25/06
Date

DEFENDANT: Abel Sanchez
CASE NUMBER: DUTX205CR000849-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

4 months

☑ The court makes the following recommendations to the Bureau of Prisons:

Placement in a facility as close to Porterville, Ca. as possible to facilitate family visitation

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☑ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☑ before 2 p.m. on 10/16/2006.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Abel Sanchez
CASE NUMBER: DUTX205CR000849-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☑ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Abel Sanchez
CASE NUMBER: DUTX205CR000849-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in a home confinement program for a period of 4 months , which may include electronic monitoring or other location verification system. The defendant is restricted to his residence at all times, except for activities pre-approved by the probation office. The defendant shall pay all the costs of the program.

2. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Abel Sanchez
CASE NUMBER: DUTX205CR000849-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Abel Sanchez
CASE NUMBER: DUTX205CR000849-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10 are the Statement of Reasons, which will be docketed separately as a sealed document

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ADAM ROSENBAUM, Defendant.	**ORDER EXTENDING PRETRIAL MOTION DEADLINE** Case No. 2:05CR926 DAK Honorable Dale A. Kimball

Based upon motion of the Defendant, Adam Rosenbaum, and good cause appearing therefore;

IT IS HEREBY ORDERED that the pretrial motion deadline is extended from August 23, 2006, until **August 31, 2006.**

SIGNED BY MY HAND this 25th day of August, 2006.

BY THE COURT:

Dale A. Kimball

HONORABLE DALE A. KIMBALL
United States District Court Judge

IN THE UNITED STATES COURT
DISTRICT OF UTAH - CENTRAL DIVISION

GARY R. BOOKER Petitioner, vs. UNITED STATES OF AMERICA Respondent,	**ORDER** Case No. 2:05 CV 00149 *related to* 2:02 CR 00509 Judge Dee Benson

Petitioner Gary R. Booker moves the Court to correct his sentence pursuant to Rule 36 of the Federal Rules of Criminal Procedure. The Court, having reviewed all briefing and relevant law, GRANTS Petitioner's motion for the reasons set forth below.

BACKGROUND

On June 11, 2003, Mr. Booker pleaded guilty to one count of Felon in Possession of a Firearm and Ammunition in violation of 18 U.S.C. § 922(g)(1). Mr. Booker was sentenced to 41 months in the custody of the Bureau of Prisons on August 20, 2003. During Mr. Booker's sentencing hearing, counsel for Mr. Booker requested that Mr. Booker's sentence run concurrent to any time served in the state system for violation of his parol, stating:

> And before that we would like to tell the Court that he is here from the State of Utah Bureau of Prisons on a writ, and there is a chance that he might be taken back by the state before he goes to serve his federal sentence. We would ask the Court to order that the sentence run concurrent, just in case he is referred back to the Utah State Prison. There is a chance he might be there for two months or three months to be processed...He has been in jail and in our custody for the past

> ten months. Plus we would ask the Court to recommend that he be given credit for that time, for the time there.

See Transcript of Hearing, August 30, 2003, at 4. The Court consented to counsel's request and ordered that Mr. Booker's sentence run concurrent with any state sentence because his state charges derived from his federal crime. Despite the United States' position that the sentence should run consecutively, the Court stated:

> On that issue I will run it concurrent, and I appreciate your remarks [Assistant U.S. Attorney] Huber. I see it maybe this way. In my experience, the state will look at what I do and it sounds like he only has a problem with the state because he committed this offense which was charged federally. I don't know what the state will do, but it strikes me as more appropriate to take the matter into consideration in my sentence I give him rather than having a consecutive sentence and not knowing if in that process something gets lost or misunderstood by the state authorities. It would be different if he was being charged with a separate crime there in the state system. Then I may think more in terms of a consecutive sentence. I am more comfortable with a concurrent sentence. I will do that.

See Mot. for Correction of Sent., Exhibit B. Despite the Court's order, the Bureau of Prisons ("BOP") has failed to include the ten months Mr. Booker spent in the custody of the state of Utah in Mr. Booker's sentence.

On December 15, 2004, Mr. Booker filed a Motion to Correct the Judgment, requesting that his federal sentence be amended to run concurrently with his state sentence for parole violation that initially triggered the federal prosecution. On January 13, 2005, this Court issued an amended judgment ordering Mr. Booker's federal sentence to run concurrently with his state sentence; however, the BOP still did not include the state time in Mr. Booker's federal sentencing calculation. . On February 22, 2005, Mr. Booker filed the present Motion to Correct Sentence pursuant to Federal Rule of Criminal Procedure 36.

ANALYSIS

Rule 36 provides, "After giving any notice it considers appropriate, the court may at any

time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission." Fed. R. Crim. P. 36. In his motion, Mr. Booker argues that the Bureau of Prisons has failed to note the Court's amended sentence and that the Court has the authority to compute the time to be served pursuant to 18 U.S.C. § 3582(c)(1)(b) and 3583(b).

The United States Supreme Court addressed this issue in *U.S. v. Wilson*, 503 U.S. 329 (1992). In *Wilson*, the Supreme Court decided whether the District Court calculates the credit for time served at the time of sentencing or whether the Attorney General computes it after the defendant has begun to serve his sentence. The Supreme Court ruled that "[Section] 3583(b) does not authorize a district court to compute the credit at sentencing." *Id.*, at 334. The Supreme Court then ruled that "After a district court sentences a federal offender, the Attorney General, through the BOP, has the responsibility for administering the sentence." *Id.*, at 335 (citation omitted). The Attorney General, not the district court, must compute the defendant's credit for time served under § 3583(b). *See Id.*, at 334.

Although the BOP retains the responsibility for administering a sentence, the sentencing court may "adjust concurrent sentences to account for time already served on a related state sentence, if the Bureau of Prisons does not credit the state time served." *See U.S. v. Troches*, 208 F.3d 204, *2 (2nd Cir. 2000) (unpublished). In *Troches*, the defendant was charged both in both the federal and state systems for crimes arising from a conspiracy to distribute cocaine. "At the sentencing, the district court sentenced Troches in accordance with the [plea] agreement and explicitly stated that the sentence would run concurrently with the sentence for the state crime." *Id.*, at *1. Despite the sentence, "the Bureau of Prisons did not credit Troches for the 19 months of state time served." *Id.* The defendant then filed a Section 2255 motion, which the district

court denied. In vacating the district court's decision, the Second Circuit ruled that "the district court does have the authority under the Guidelines to adjust the sentence despite Section 3585." *Id.*

Mr. Booker's case mirrors the facts in *Troches*. Like *Troches*, the crime for which he was incarcerated in the state system derives from the same incident as his federal crime. Like *Troches*, the Court ordered that the federal sentence should run concurrently. This Court even went so far as to acknowledge Mr. Booker's request that his time in state custody be included in the sentence. The Court has already amended the sentence once in an attempt to ensure that its order that Mr. Booker's time served in the state system be credited toward his federal sentence. It is clear to this Court that Mr. Booker's federal sentence must include any and all time served in the Utah state correctional system stemming from this crime.

CONCLUSION

For these reasons, the Court hereby GRANTS Mr. Booker's motion and ORDERS that his sentence be amended to 41 months in federal custody, which time is to include the ten months Mr. Booker was incarcerated in the Utah state system prior to sentencing and any time he spent in the Utah State system between the sentencing hearing and his transfer to a federal prison.

IT IS SO ORDERED.

DATED this 25th day of August, 2006.

Dee Benson
United States District Judge

IN THE UNITED STATES DISTRICT COURT

CENTRAL DIVISION, DISTRICT OF UTAH

YVONNE STEENBERG-HATCHER,	:	Case No. 2:05CV 287 PGC
Plaintiff,	:	
		O R D E R
vs.	:	
CITY MARKET, INC., et al.,	:	Judge PAUL B. CASSELL
Defendant,	:	Magistrate Judge Brooke C. Wells

Pursuant to the order of the district judge, this case is set for a settlement conference before the undersigned on September 25, 2006, from 10:00 a.m. through 12:00 p.m. The parties will convene in Courtroom No. 436 prior to the Settlement Conference which will be held in the ADR Suite, Room 405, at the U. S. Courthouse, 350 South Main Street, Salt Lake City, Utah.

IT IS HEREBY ORDERED:

Participation of Parties: The litigants are required to be personally present along with counsel if so represented. Counsel is required to have final settlement authority. A litigant with complete settlement authority must be physically present and

participate in the settlement conference for the entire time period.

Case Status Report: Counsel shall meet and confer, and at least ten(10) days before the settlement conference, the parties shall deliver an agreed **case status report** directly to the Magistrate Judge at Room 431, U. S. Courthouse, 350 South Main Street, Salt Lake City, Utah 84101. The agreed case status report shall include the following:

1. A brief statement of the facts of the case;

2. A brief statement of the claims and defenses, i.e.,statutory or other grounds upon which the claims are founded, and relief sought;

3. A brief statement of the facts and issues upon which the parties agree and a description of the major issues in dispute; and

4. A summary of relevant proceedings to date including rulings on motions and motions outstanding.

Confidential Settlement Conference Statement: At least ten(10) days before the settlement conference, each party shall separately lodge with the Magistrate Judge a **confidential settlement conference statement** including:

A. A forthright evaluation of the party's likelihood of prevailing on the claims and defenses;

B. An estimate of the cost and time to be expended for further discovery, pretrial and trial;

C. Identification of any discrete issues which, if resolved, would aid in the settlement of the case; and

D. The party's position on settlement, including present demands and offers and history of past settlement discussions, offers and demands.

The **confidential settlement conference statement** should be delivered directly to the Magistrate Judge. Copies of the **confidential settlement conference statement** shall not be filed with the Clerk of the Court, nor served upon the other parties or counsel. The Court and its personnel shall not permit other parties or counsel to have access to these **confidential settlement conference statements.**

Confidentiality: No report of proceedings, including any statement made by a party, attorney, or other participants in the settlement conference may be reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission unless otherwise discoverable. Pursuant to DUCivR 16-3(d), a written report for the purposes of informing the referring judge whether or not the dispute has been settled is the only permissible communication allowed with regard to the settlement conference. No party will be bound by anything agreed upon or spoken at the conference except as provided in a written settlement agreement. No participant in the settlement conference may be compelled to disclose in writing or otherwise, or to testify in any proceeding, as to information disclosed or representations made during the settlement conference process, except as required by law.

For questions related to the conference, counsel may contact Chambers, (801) 524-3290.

DATED this 24th day of August, 2006.

BY THE COURT:

Brooke C. Wells

BROOKE C. WELLS
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

IHC HEALTH SYSTEMS, INC. d/b/a LDS HOSPITAL	§	
Plaintiff,	§	
v.	§	**CIVIL ACTION NO. 2:05CV00344DS**
LA BARGE TRUCKING COMPANY, INC. AND AMERICAN TRUST ADMINISTRATORS	§	
Defendants.	§	**JURY DEMANDED**

ORDER ON PLAINTIFF'S MOTION TO DISMISS

After reviewing Plaintiff IHC Health Systems, Inc. d/b/a LDS Hospital's Motion to Dismiss, this Court is of the opinion that the Motion should be granted in its entirety. Therefore, it is ORDERED that Plaintiff's claims against LaBarge Trucking Company, Inc. And American Trust Administrators are DISMISSED, with prejudice to them being reasserted.

Signed this the 25th day of August, 2006.

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

IHC HEALTH SYSTEMS, INC. d/b/a LDS HOSPITAL	§	
Plaintiff,	§	
v.	§	**CIVIL ACTION NO. 2:05CV00344DS**
LA BARGE TRUCKING COMPANY, INC. AND AMERICAN TRUST ADMINISTRATORS	§	
Defendants.	§	**JURY DEMANDED**

PLAINTIFF'S MOTION TO DISMISS

TO THE HONORABLE JUDGE OF THIS COURT:

IHC Health Systems, Inc. d/b/a LDS Hospital ("LDS Hospital"), files this Motion to Dismiss and would show this Court the following:

1. As the parties to this matter have resolved all disputes by agreement, LDS Hospital requests that this case be dismissed with prejudice. The parties have agreed that each party will bear their own costs of litigation.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that this case be dismissed with prejudice to its refiling. Plaintiff further requests all other relief to which it is entitled.

Respectfully submitted,

THE TUREK LAW FIRM, PLLC

By: _____
Douglas Turek
State Bar No. 9649
Attorney-in-Charge

OF COUNSEL:

THE TUREK LAW FIRM, PLLC
25231 Grogan's Mill Road, Suite 110
The Woodlands, Texas 77380
Telephone: (281) 296-6920
Telecopier: (281) 296-0733

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff Motion to Dismiss has been forwarded to the following opposing counsel on the 4th day of August, 2006.

Herm Olsen
Hillyard, Anderson & Olsen, P.C.
175 East First North
Logan, Utah 84321

David N. Kelley
Scott M. Petersen
Fabian & Clendenin
P.O. Box 510210
Salt Lake City, Utah 84151

Douglas Turek

DT/fmo
T:\Turek Law Firm\LITIGATION\IHC.1009.00\SETSER.1009.35\PLDG\MTN-DISMISS.001.wpd
July 5, 2005

HOLME ROBERTS & OWEN LLP
Matthew N. Evans #7051
J. Andrew Sjoblom, #10860
299 South Main Street, Suite 1800
Salt Lake City, Utah 84111-2263
Telephone: (801) 521-5800
Facsimile: (801) 521-9639

Attorneys for Plaintiff Jack Walker

IN THE UNITED STATES JUDICIAL DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

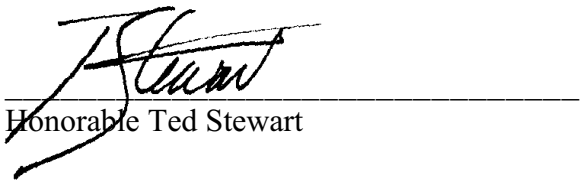
JACK WALKER, **Plaintiff,** v. **300 SOUTH MAIN, LLC, A UTAH LIMITED LIABILITY COMPANY,** **Defendant.** **300 SOUTH MAIN, LLC, a Utah Limited Liability Company,** **Counterclaim Plaintiff,** **v.** **JACK WALKER,** **Counterclaim Defendant.**	***ORDER GRANTING EXTENSION OF TIME UNDER DUCivR 77-2 FOR PLAINTIFF TO FILE OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT*** Case No. 2:05cv00442TS Judge Ted Stewart

Pursuant to DUCivR 77-2, the parties have filed a stipulation that Plaintiff, Jack Walker, may have until September 6, 2006 to respond to Defendant's pending motion for summary judgment. Jack Walker's Opposition to the motion for summary judgment is currently due on Tuesday, August 29, 2006; thus the time originally prescribed has not expired.

IT IS ORDERED that Jack Walker shall file his Opposition to Defendant's motion for summary judgment no later than September 6, 2006.

DATED this 28th day of August, 2006.

UNITED STATES DISTRICT COURT



Honorable Ted Stewart

APPROVED AS TO FORM:

JONES WALDO HOLBROOK & McDONOUGH, P.C.

s/Vincent C. Rampton
170 South Main Street, Suite 1700
Salt Lake City, Utah 84101
Attorneys for Defendant

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Attorneys for Plaintiff Jack Walker

IN THE UNITED STATES JUDICIAL DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

JACK WALKER, **Plaintiff,** v. **300 SOUTH MAIN, LLC, A UTAH LIMITED LIABILITY COMPANY,** **Defendant.** **300 SOUTH MAIN, LLC, a Utah Limited Liability Company,** **Counterclaim Plaintiff,** **v.** **JACK WALKER,** **Counterclaim Defendant.**	***ORDER GRANTING EXTENSION OF TIME UNDER DUCivR 77-2 FOR PLAINTIFF TO FILE OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT*** Case No. 2:05cv00442TS Judge Ted Stewart

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IT IS ORDERED that Jack Walker shall file his Opposition to Defendant's motion for summary judgment no later than September 6, 2006.

DATED this 28th day of August, 2006.

UNITED STATES DISTRICT COURT

Honorable Ted Stewart

APPROVED AS TO FORM:

JONES WALDO HOLBROOK & McDONOUGH, P.C.

s/Vincent C. Rampton
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Attorneys for Defendant

HIRSCHI CHRISTENSEN, PLLC

s/David P. Hirschi
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Salt Lake City, Utah 84111
Attorneys for Defendant

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

QWEST CORPORATION Plaintiff, vs. UTAH TELECOMMUNICATIONS OPEN INFRASTRUCTURE AGENCY, an interlocal cooperative governmental agency; and the CITY OF RIVERTON, a Utah municipal corporation Defendants.	ORDER GRANTING LEAVE TO FILE EXCESS PAGES IN REPLY Case No. 2:05-cv-00471

The court has reviewed the Motion for Leave to File Overlength Memorandum filed by the defendant, Utah Telecommunications Open Infrastructure Agency. Based on good cause shown, the court GRANTS the defendant's motion [#133]. UTOPIA has leave to file up to nineteen (19) pages of arguments in reply to the plaintiff's memorandum in opposition to summary judgment.

This leave to file an overlength reply memorandum shall not be construed as an extension of time in which to file.

DATED this 28th day of August, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

Prepared and Proposed by:
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Melissa A. Orien (10613)
HOLLAND & HART LLP
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Salt Lake City, Utah 84111
Telephone: (801) 517-7848
Fax: (801) 364-9124

Attorneys for Hexcel Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

COATES CONSTRUCTION & ENGINEERING, INC., a Utah corporation, Plaintiff, v. HEXCEL CORPORATION, a Delaware corporation, Defendant.	**ORDER APPOINTING ARBITRATOR** Case No. 2:05 CV 00532 TC (consolidated with Case No. 2:05CV 00652 TC) Judge Tena Campbell
HEXCEL CORPORATION, a Delaware corporation, Counterclaim plaintiff, v. COATES CONSTRUCTION & ENGINEERING, INC., a Utah corporation, Counterclaim defendant.	

Pursuant to the Order of this Court dated July 13, 2006, Hexcel Corporation filed a Motion to Appoint Arbitrator in this matter on August 10, 2006 (the "Hexcel Motion") requesting that this Court appoint an arbitrator from a list of three proposed arbitrators, with the arbitrators listed in the order of Hexcel's preference that they be appointed. Adams & Smith, Inc. filed a Joinder In Motion To Appoint Arbitrator, joining in the Hexcel Motion and indicating that Adams & Smith has no objection to the arbitrators Hexcel proposed. The time for other parties to object to the arbitrators proposed by Hexcel and/or propose alternative arbitrators has passed.

Accordingly, the Court hereby orders as follows:

1. Subject to the qualifications below, this Court hereby appoints Richard A. Friedlander of Marsical, Weeks, McIntyre & Friedlander, P.A. as the arbitrator in this matter. Arbitration shall be conducted in accordance with this Court's Order dated November 15, 2005, and the Stipulation and Joint Motion for Order Compelling Arbitration and Staying Proceedings filed with this Court on October 20, 2005.

2. Hexcel is directed to inquire with Mr. Friedlander in writing, copied to all parties in this action, concerning his ability and willingness to accept this appointment. If he accepts this appointment, he shall serve as appointed and proceedings in this matter shall be stayed in accordance with the Court's Order dated November 15, 2005.

3. If Mr. Friedlander does not accept this appointment to serve as the arbitrator in this action, either because of a conflict or otherwise, this Court hereby appoints each arbitrator proposed by Hexcel, seriatim, in the order of preference indicated in the Hexcel Motion, and

directs Hexcel to inquire concerning the ability and willingness of each such arbitrator to accept this appointment, following the procedures outlined in this Order.

4. If none of the arbitrators proposed in the Hexcel Motion accept this appointment, any party may petition this Court at any time for the appointment of an arbitrator pursuant to the terms of this Court's Order of July 13, 2006.

DATED this 28 day of August, 2006.

BY THE COURT:

Tena Campbell

Honorable Tena Campbell
U.S. District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

RORY J. SCHULTZ,	)	
	)	
Plaintiff,	)	Case No. 2:05-CV-1002 DAK
	)	
v.	)	District Judge Dale Kimball
	)	
STATE OF UTAH et al.,	)	**O R D E R**
	)	
Defendants.	)	Magistrate Judge Samuel Alba

Plaintiff/inmate, Rory Schultz, filed a *pro se* civil rights complaint. *See* 42 U.S.C.S. § 1983 (2006). He has since filed two motions for appointed counsel, a motion for service of process, and a motion for preliminary injunctive relief.

The Court first addresses Plaintiff's motions for appointed counsel. Plaintiff has no constitutional right to counsel. *See Carper v. Deland*, 54 F.3d 613, 616 (10th Cir. 1995); *Bee v. Utah State Prison*, 823 F.2d 397, 399 (10th Cir. 1987). However, the Court may in its discretion appoint counsel for indigent inmates. *See* 28 U.S.C.S. § 1915(e)(1) (2006); *Carper*, 54 F.3d at 617; *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991). "The burden is upon the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel." *McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985).

When deciding whether to appoint counsel, the district court

should consider a variety of factors, "including 'the merits of the litigant's claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims.'" *Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (quoting *Williams*, 926 F.2d at 996); *accord McCarthy*, 753 F.2d at 838-39. Considering the above factors, the Court concludes here that (1) it is not clear at this point that Plaintiff has asserted a colorable claim; (2) the issues in this case are not complex; and (3) Plaintiff is not incapacitated or unable to adequately function in pursuing this matter. Thus, the Court denies for now Plaintiff's motions for appointed counsel.

Second, the Court turns to Plaintiff's motion for service of process. This is denied as moot because Plaintiff is proceeding *in forma pauperis*. *See* 28 U.S.C.S. § 1915 (2006). In such cases, "[t]he officers of the court shall issue and serve all process, and perform all duties in such cases." *See id.* § 1915(d).

Third, the Court evaluates Plaintiff's motion for preliminary injunctive relief. Plaintiff appears to be merely trying to expedite the relief he seeks in his complaint. And, Plaintiff has not specified adequate facts showing each of the four elements necessary to obtain a preliminary injunctive order:

> "(1) a substantial likelihood of prevailing on the merits; (2) irreparable harm in the absence of the injunction; (3) proof that the threatened harm outweighs any damage the injunction may cause to the party opposing it; and (4) that the injunction, if issued, will not be adverse to the public interest."

Brown v. Callahan, 979 F. Supp. 1357, 1361 (D. Kan. 1997) (quoting *Kan. Health Care Ass'n v. Kan. Dep't of Soc. and Rehab. Servs.*, 31 F.3d 1536, 1542 (10th Cir. 1994)).

Preliminary injunctive relief is an extraordinary and drastic remedy to be granted only when the right to relief is "clear and unequivocal." *SCFC ILC, Inc. v. VISA USA, Inc.*, 936 F.2d 1096, 1098 (10th Cir. 1991). The Court has carefully reviewed Plaintiff's pleadings and motion for injunctive relief and concludes Plaintiff's claims do not rise to such an elevated level that an emergency injunction is warranted. In sum, Plaintiff has not met the heightened pleading standard required in moving for an emergency injunction. This motion is denied.

IT IS HEREBY ORDERED that:

(1) Plaintiff's two motions for appointed counsel are denied. (*See* File Entry #s 4 & 11.) However, if, after the case

is further reviewed, it appears that counsel may be needed or of specific help, the Court will ask an attorney to appear pro bono on Plaintiff's behalf.

(2) Plaintiff's motion for service of process is denied. (*See* File Entry # 5.)

(3) Plaintiff's motion for preliminary injunctive relief is denied. (*See* File Entry # 6.)

DATED this 25th day of August, 2006.

BY THE COURT:

DALE A. KIMBALL
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. AMBER YOUNG, Defendant.	ORDER AND MEMORANDUM DECISION Case No. 2:06 CR 37

Defendant Amber Young requests suppression of evidence discovered on her person during a search conducted by Officer Brett Miller. According to the Untied States, Officer Miller stopped Ms. Young's vehicle and conducted the challenged search under the authority of a search warrant. Ms. Young argues that the warrant in question only authorized a search of her person if she happened to be present at an apartment that was also subject to the search warrant. Because Officer Miller undertook the search of Ms. Young in the good-faith belief that the warrant authorized the search, Ms. Young's motion to suppress is denied.

Background

After receiving a complaint about alleged drug use and distribution occurring at an apartment in Taylorsville, Utah, Officer Miller started to investigate. Officer Miller learned from a confidential informant that Ms. Young lived in the apartment and was selling substantial quantities of methamphetamine from within the apartment. After learning that the confidential informant had purchased methamphetamine from Ms. Young in the past, Officer Miller decided

to set up controlled purchases of methamphetamine to confirm the confidential informant's allegations.

Officer Miller and the confidential informant conducted two controlled purchases of methamphetamine. In each case, Officer Miller searched the confidential informant before the transaction and both times the confidential informant returned with a substance that field-tested positive as methamphetamine.

After the second controlled purchase, Officer Miller prepared an affidavit in support of a search warrant. Officer Miller's affidavit outlined his experience in drug interdiction and investigation and then detailed the steps he had followed in pursuing his investigation. The affidavit contained seven paragraphs describing what evidence Officer Miller sought to discover. The first six paragraphs focus expressly on evidence Officer Miller believed he would discover inside the apartment itself. The final paragraph states that Officer Miller "believes that [Ms.] Young should be searched for narcotics. Through training and experience your affiant knows that persons engaged in ongoing criminal activities such as narcotics distribution tend to conceal narcotics on their person." (Aff. for Search & Seizure Warrant 4, attached as Addendum A to Memo. in Supp. of Mot. to Suppress.)

Utah State District Court Judge Pat Brian issued a warrant based on Officer Miller's affidavit. The warrant contains two separate paragraphs in bold type that describe the warrant's scope. The first refers only to the apartment in which the alleged drug distribution was occurring. The second refers directly and exclusively to Ms. Young herself.

The day following the issuance of the warrant, Officer Miller stopped Ms. Young on the freeway, many miles away from the apartment mentioned in the warrant. Officer Miller proceeded to search Ms. Young and discovered methamphetamine. Ms. Young challenges the

legality of the search of her person and requests suppression of the evidence discovered by Officer Miller.

Analysis

While Ms. Young challenges the validity of the search, she "does not challenge the probable cause finding or the facial validity of the warrant." (Memo. in Supp. of Mot. to Supp. 4.) Instead, Ms. Young argues that the warrant only authorized a search of the apartment and that the warrant allowed a search of Ms. Young only if she was on the premises when the warrant was executed. Accordingly, Ms. Young claims that Officer Miller's execution of the warrant was improper, not the warrant itself.

The United States reads the warrant differently. It argues that the text of the warrant indicates that a probable cause determination--separate and apart from that made in relation to the apartment--supported the warrant's approval of a search of Ms. Young, wherever she may be found. According to the United States, because Officer Miller reasonably believed that the warrant allowed the search, the exclusionary rule should not operate to suppress the evidence found on Ms. Young.

A review of the warrant supports the interpretation proposed by the United States. The warrant contains two separate paragraphs in bold type that articulate the warrant's scope. The first paragraph is confined exclusively to the apartment. The second is confined exclusively to Ms. Young. The affidavit that Officer Miller submitted in support of the warrant similarly makes two distinct requests: (1) permission to search the apartment, and (2) permission to search Ms. Young.

In this sense, the warrant is distinguishable from the warrant in Parks v. Kentucky, 192 S.W.3d 318 (Ky. 2006), the case upon which Ms. Young primarily rests her motion to suppress.

In Parks, the court held that officers exceeded the scope of a warrant that authorized the search of a suspect's residence and "any vehicle on the property . . . [and] any person present at the time [the] search warrant is executed," when they stopped and searched a vehicle in which the suspect was a passenger. Id. at 323, 329. In Parks, the language of the warrant expressly conditioned the permission to search the vehicle on its presence at the suspect's residence. The warrant in this case contains no such limitation.

The conclusion that the language of the warrant authorizes a search of Ms. Young that is not conditioned on her presence at the apartment undoubtedly raises questions about the validity of the warrant. But the United States argues that there is no need to assess the underlying validity of the warrant because Officer Miller relied upon and executed the warrant in good faith. Accordingly, the United States contends that the exclusionary rule does not operate to suppress the evidence obtained as a result of the search.

The United State's argument relies upon the good-faith exception to the exclusionary rule recognized by the United States Supreme Court in United States v. Leon, 468 U.S. 897 (1984). Because application of the good-faith exception in this case resolves concerns over the admissibility of the evidence, there is no need to assess the underlying validity of the warrant itself. See, e.g., United States v. Price, 265 F.3d 1097, 1102 (10th Cir. 2001) ("If this court determines that officers acted in good faith[,] . . . it does not need to reach the issue of whether probable cause existed for the warrant."); United States v. Bishop, 890 F.2d 212, 216 (10th Cir.1989) ("[R]esolution of whether there was probable cause supporting the warrant is not necessary to our decision . . . because . . . the agents' conduct clearly falls withing the 'good faith exception' to the exclusionary rule.").

"In Leon, the Court held that evidence obtained pursuant to a constitutionally defective

search warrant is admissible at trial if the officers executing the search warrant reasonably relied on the warrant and there is no evidence the officers misled the magistrate issuing the warrant." United States v. Angelos, 433 F.3d 738, 746 (10th Cir. 2006). In so holding, the Court recognized that "[p]enalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations." Leon, 468 U.S. at 921. Accordingly, "suppression of evidence obtained pursuant to a warrant should be ordered only on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule." Leon, 468 U.S. at 918.

When an officer relies on a warrant, it is presumed that the officer is acting in good faith. See United States v. Cardall, 773 F.2d 1128, 1133 (10th Cir. 1985) ("The first notion to be remembered in considering the good faith principle is the presumption created in Leon that when an officer relies on a warrant, the officer is acting in good faith."). Therefore, when an officer relies on a warrant, the good-faith analysis is confined to "the objectively ascertainable question whether a reasonably well-trained officer would have known that the search was illegal despite the magistrate's authorization." United States v. McKneely, 6 F.3d 1447, 1454 (10th Cir. 1993) (internal quotation omitted). "[W]hen reviewing an officer's reliance upon a warrant, we must determine whether the underlying documents are 'devoid of factual support, not merely whether the facts they contain are legally sufficient.'" Id. (quoting Cardall, 773 F.2d at 1133).

Here, Officer Miller relied on a warrant when searching Ms. Young. The warrant contained two bolded paragraphs that articulated the warrant's scope. The first referred exclusively to the apartment. The second referred exclusively to Ms. Young. Admittedly, the facts submitted to the magistrate in support of Officer Miller's request for a warrant to search Ms. Young are sparse. But Officer Miller stated his position to a detached magistrate and was

granted a warrant that, on its face, does appear to authorize a search of Ms. Young separate and apart from the search of the apartment.

Nothing in the record indicates that Officer Miller should have viewed the warrant as constitutionally suspect. Accordingly, he acted reasonably in relying on the warrant and the evidence he obtained is not subject to suppression. See id. at 1455 ("Given the strong presumption in favor of warrant searches, the 'great deference' accorded to a magistrate's probable cause determination, and the fact that the warrant affidavit contained sufficient facts at least to establish a reasonable suspicion of criminal activity, we hold that a reasonable officer . . . would have assumed the search warrant was valid.").

Conclusion and Order

The warrant in this case purported on its face to authorize a search of Ms. Young separate and apart from a search of her apartment. Officer Miller reasonably relied on the validity of that warrant when conducting the search that Ms. Young now challenges. Because suppression of the evidence will not further the purposes of the exclusionary rule, Ms. Young's Motion to Suppress is DENIED.

DATED this 28th day of August, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

UNITED STATES DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
Jose Eluterio Rojas-Juarez

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX206CR000051-002

USM Number: 65042-208

Michael Jaenish
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 and 2 of the Indictment.

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §1546(a) and 18 U.S.C. §2	VISA Fraud / Aiding and Abetting		1
18 U.S.C. §1028A	Aggravated Identity Theft		2

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☑ Count(s) 14 thru 19 and 21 ☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/24/2006
Date of Imposition of Judgment

Dale A. Kimball
Signature of Judge

Dale A. Kimball — U.S. District Judge
Name of Judge — Title of Judge

August 25, 2006
Date

DEFENDANT: Jose Eluterio Rojas-Juarez
CASE NUMBER: DUTX206CR000051-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

45 months. As to count 1: 21 months; as to count 2: 24 months, to run consecutively.

☑ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be sent to FCI Lompoc CA or as close thereto as possible to facilitate family visitation.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Jose Eluterio Rojas-Juarez
CASE NUMBER: DUTX206CR000051-002

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Jose Eluterio Rojas-Juarez
CASE NUMBER: DUTX206CR000051-002

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States. If the defendant returns to the United States during the period of supervision, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: Jose Eluterio Rojas-Juarez
CASE NUMBER: DUTX206CR000051-002

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 200.00	$	$

☐ The determination of restitution is deferred until ______. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	$ 0.00	$ 0.00	

☐ Restitution amount ordered pursuant to plea agreement $ ____________

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Jose Eluterio Rojas-Juarez
CASE NUMBER: DUTX206CR000051-002

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 200.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
VALENTINE ACOSTA-LOZOYA

JUDGMENT IN A CRIMINAL CASE

Case Number: DUT 2:06CR000100-001

USM Number: 13443-081

Justin Roberts
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 922(g)(5)(A)	Alien in Possession of a Firearm		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/24/2006
Date of Imposition of Judgment

Signature of Judge

Paul Cassell — US District Judge
Name of Judge — Title of Judge

8/25/06
Date

DEFENDANT: VALENTINE ACOSTA-LOZOYA
CASE NUMBER: DUT2:06CR000100-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

10 months

☑ The court makes the following recommendations to the Bureau of Prisons:

Placement as close to Price, Utah as possible to facilitate family visitiation.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: VALENTINE ACOSTA-LOZOYA
CASE NUMBER: DUTX06CR000100-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: VALENTINE ACOSTA-LOZOYA
CASE NUMBER: DUT2:06CR000100-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not re-enter the United States illegally. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: VALENTINE ACOSTA-LOZOYA
CASE NUMBER: DUT206CR000100-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: VALENTINE ACOSTA-LOZOYA
CASE NUMBER: DUTX06CR000100-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 1 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

RICHARD P. MAURO (5402)
Lawyer for Defendant
43 East 400 South
Salt Lake City, Utah 84111
(801) 363-9500

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	**ORDER CONTINUING TRIAL**
Plaintiff,	:	**ORDER**
v.	:	
MARK CARLSON,	:	Case No. 2:06CR00108
Defendant.	:	Judge Dee Benson

Based upon the motion of the defendant, Mark Carlson, through his lawyer, Richard P. Mauro, stipulation of Lana Taylor, Special Assistant United States Attorney and good cause appearing, it is hereby

ORDERED that the trial presently scheduled to begin August 28, 2006 be and is hereby continued. The trial will be re-scheduled with the cooperation and availability of counsel for the parties.

The court finds that the ends of justice served by this continuance outweigh the best interest of the public and the defendant in a speedy trial. The time period of this continuance shall be excluded under the Speedy Trial Act. 18 U.S.C. § 3161(8).

Dated this 25 day of August, 2006.

Dee Benson

THE HONORABLE DEE BENSON
UNITED STATES DISTRICT COURT JUDGE

Jury Trial cont to
10/30/06 @ 8:30AM

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Lana Taylor
Special Assistant United States Attorney
348 East South Temple
Salt Lake City, Utah 84111

/s/ Heather M. Stokes
Heather Stokes

UNITED STATES DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
Miguel Lopez-Sepulveda

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX206CR000246-001

USM Number: 13517-081

Vanessa Ramos
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 1708	Possession of Stolen Mail		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☑ Count(s) 2 ☑ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/24/2006
Date of Imposition of Judgment

Signature of Judge

Paul Cassell — US District Judge
Name of Judge — Title of Judge

8/25/06
Date

DEFENDANT: Miguel Lopez-Sepulveda
CASE NUMBER: DUTX206CR000246-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

10 months

☑ The court makes the following recommendations to the Bureau of Prisons:

Placement in a facility as close to Utah as possible to facilitate family visitation.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Miguel Lopez-Sepulveda
CASE NUMBER: DUTX206CR000246-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Miguel Lopez-Sepulveda
CASE NUMBER: DUTX206CR000246-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not re-enter the United States illegally. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: Miguel Lopez-Sepulveda
CASE NUMBER: DUTX206CR000246-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Miguel Lopez-Sepulveda
CASE NUMBER: DUTX206CR000246-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
Juan Carlos-Castro-Ramirez

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX206CR000279-001

USM Number: 13588-081

Robert Hunt
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 USC § 1326	Re-Entry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/24/2006
Date of Imposition of Judgment

Signature of Judge

Paul Cassell — US District Judge
Name of Judge — Title of Judge

8/25/06
Date

DEFENDANT: Juan Carlos-Castro-Ramirez
CASE NUMBER: DUTX206CR000279-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

12 months + 1 day

☑ The court makes the following recommendations to the Bureau of Prisons:

Placement in a facility as close to Utah as possible to facilitate family visitation.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Juan Carlos-Castro-Ramirez
CASE NUMBER: DUTX206CR000279-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Juan Carlos-Castro-Ramirez
CASE NUMBER: DUTX206CR000279-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States. In the event that the defendant should be released from confinement without being deported, he shall contact the USPO in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision, he/she is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: Juan Carlos-Castro-Ramirez
CASE NUMBER: DUTX206CR000279-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Juan Carlos-Castro-Ramirez
CASE NUMBER: DUTX206CR000279-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

Sam Meziani (#9821)
VAN COTT BAGLEY CORNWALL & McCARTHY
50 South Main Street, Suite 1600
Salt Lake City, UT 84144-0450
Phone: (801) 532-3333
Facsimile: (801) 534-0058
Attorneys for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

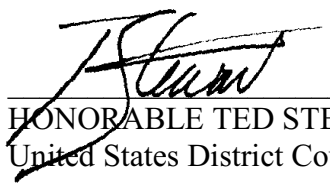
UNITED STATES OF AMERICA Plaintiff, v. ARTURO SALGADO-VICTORIANO Defendant.	**ORDER ON DEFENDANT'S MOTION TO EXCLUDE TIME UNDER THE SPEEDY TRIAL ACT** Docket No. 2:06cr418 TS Judge Ted Stewart

Based on Defendant's Motion to Exclude Time Under the Speedy Trial Act, and for good cause appearing, the Court ORDERS as follows:

1. Defendant's Motion to Exclude Time Under the Speedy Trial Act is GRANTED.
2. All time between August 14, 2006 and the new change of plea hearing date of September 21, 2006 shall be excluded from the computation of time required under the Speedy Trial Act, 18 U.S.C. §3161 *et. seq.*

SIGNED AND DATED this 28th day of August, 2006.

BY THE COURT:



HONORABLE TED STEWART
United States District Court Judge

Joshua M. Bowland (10075)
8 East Broadway, Suite 500
Salt Lake City, Utah 84111
Tel.801.746.4044
Fax.801.746.5613
joshbowland@aol.com

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. OSCAR MORENO-VILLA, Defendant.	**ORDER TO WAIVE SPEEDY TRIAL DATE** Case No. 2:06CR00422 Judge: Ted Stewart

Based upon the motion filed by Defendant to waive the original trial date and thereby waive his right to a speedy trial:

IT IS ORDERED that the trial date on August 28, 2006 is hereby stricken. The Court finds that pursuant to 18 U.S.C. § 3161(h)(8)(a), the continuance serves the ends of justice and outweighs the interests of the public and the Defendant in a speedy trial.

IT IS FURTHER ORDERED that Defendant's change of plea hearing scheduled before this Court on September 18, 2006 at 2:30 p.m., be granted.

DATED this 28th day of August, 2006.

BY THE COURT:

Honorable Ted Stewart
U.S. District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA	:	**ORDER FOR MODIFICATION OF CONDITIONS OF RELEASE**
Plaintiff,	:	**2:06-CR-00441-PGC**
Steven Don Naisbitt	:	
Defendant	:	

Upon recommendation of the United States Pretrial Services Office to modify the conditions of release for the above defendant,

IT IS HEREBY ORDERED that the following condition be removed:

1. Reside at the Cornell Correctional Center.

All other conditions of pretrial release are to remain the same.

DATED this 25th day of August, 2006

BY THE COURT:

Honorable Samuel Alba, Chief
United States Magistrate Judge

BRETT L. TOLMAN, United States Attorney, (#8821)
LANA TAYLOR, Special Assistant United States Attorney, (#7642)
Attorneys for the United States of America
348 East South Temple
Salt Lake City, UT 84111
Telephone: 801-524-4156
Facsimile: 801-524-5803

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. BRET JAY HANSEN, Defendant.	:	**ORDER FOR WRIT OF HABEAS CORPUS AD PROSEQUENDUM** Case No. 2:06CR517 TC Magistrate Judge Warner

TO: THE UNITED STATES MARSHAL FOR THE DISTRICT OF UTAH, OR TO ANY OTHER UNITED STATES MARSHAL, AND TO ANY AUTHORIZED OFFICER IN WHOSE CUSTODY THE DEFENDANT MAY BE HELD:

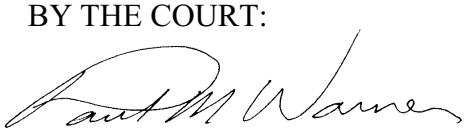
G R E E T I N G S:

You are directed to bring **BRET JAY HANSEN**, who is confined at the Utah State Prison in Gunnison, before Magistrate Judge Warner, United States District Court, 350 South Main, Salt Lake City, Utah, on the **7th day of September, at 1:00 p.m.,** for the purpose of an initial appearance/arraignment upon the charges pending against the Defendant in said United

States District Court, and in the above-entitled and pending cause, and for final disposition at a later date; and hold said Defendant at all times in your custody as an agent of the United States of America until final disposition of this case; that immediately after the conclusion of the proceedings and final disposition of the above-entitled cause in the United States District Court, you return the Defendant to the institution where the Defendant was confined, under safe and secure conduct, and have you then and there make a return upon this Writ.

Dated this 28th day of August, 2006.

BY THE COURT:



MAGISTRATE JUDGE WARNER
UNITED STATES MAGISTRATE JUDGE

United States District Court
for the District of Utah

Criminal Pretrial Instructions

The prosecution has an open file policy.

Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

Counsel must have all exhibits premarked by the clerk for the district judge before trial.

If negotiations are not completed for a plea by the plea deadline, the case will be tried.

In cases assigned to Judge Cassell, counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers whether the matter will proceed to trial.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

United States of America	Case No. 2:06CR00550 PGC
Plaintiff,	Seizure Warrants: WE-06-242-M WE-06-243-M WE-06-244-M
v.	
HOA THANH VO, et al.,	ORDER TO UNSEAL THE CASE
Defendants.	JUDGE: Paul G. Cassell

Having reviewed the government's Motion and Memorandum to Unseal the Redacted Seizure Warrants in this action, seeing that there is no risk in regard to privacy in the release of the Redacted Copy of the Seizure Warrants, and good cause appearing;

IT IS ORDERED that the Plaintiff's Motion to Unseal the Redacted Copy of the Seizure Warrants is granted. The original Seizure Warrants are to remain **SEALED** and preserved in the records of the Court.

DATED this 25th day of August, 2006.

BY THE COURT:

~~PAUL G. CASSELL, Judge~~
United States ~~District~~ Magistrate Court

RONALD J. YENGICH #3580
YENGICH, RICH & XAIZ
Attorneys for Defendant
175 East 400 South, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 355-0320
Fax: (801) 364-6026
Email: ronaldy333@aol.com

IN THE UNITED STATES DISTRICT COURT, CENTRAL DIVISION
DISTRICT OF UTAH

UNITED STATES OF AMERICA, Plaintiff, vs. TRI DUNG MINH NGUYEN, Defendant.	**ORDER TO ALLOW SUBSTITUTION OF COUNSEL** Case No. 2:06-CR-00550PGC-14 Honorable Judge Paul G. Cassell

Based upon motion of counsel and good cause appearing, now therefore;

IT IS HEREBY ORDERED that Ronald J. Yengich be allowed to substitute as counsel for the Defendant, Tri dung Minh Nguyen, replacing David V. Finlayson who has previously entered an appearance of counsel.

SIGNED BY MY HAND this 24th day of August, 2006.

~~PAUL G. CASSELL~~ Samuel Alba
United States ~~District Court~~ Judge
Magistrate

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Order to Allow Substitution of Counsel was filed electronically and caused to be served by electronic notice to all parties listed below on this _____ day of August, 2006.

Ronald J. Yengich
Yengich, Rich & Xaiz
175 E. 400 S., Ste 400
Salt Lake City, Utah 84111

Dustin B. Pead
Brett R. Parkinson
Gregory C. Diamond
US Attorney's Office
185 South State Street
Salt Lake City, Utah 84101

David V. Finlayson
Attorney at Law
43 East 400 South
Salt Lake City, Utah 84111

_____

DEIRDRE A. GORMAN (#3651)
Attorney at Law
205 26th Street, Suite 32
Bamberger Square Building
Ogden, Utah 84401
Telephone: (801) 394-9700
Facsimile: (801) 621-4770

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	/	**ORDER ALLOWING WITHDRAWAL OF COUNSEL**
Plaintiff,	/	
vs.	/	
GARY MINH NGUYEN, et al.,	/	
		Case No. 2:06-CR-0550PGC
Defendant.	/	Magistrate: Brooke C. Wells

BASED UPON the Motion to Withdraw as Counsel for Defendant filed by appointed counsel DEIRDRE A. GORMAN, and the Entry of Appearance filed by retained counsel MICHAEL STUDEBAKER;

IT IS HEREBY ORDERED that DEIRDRE A. GORMAN be and hereby is permitted to withdraw as counsel for Defendant effective immediately, and her name removed from the e-filing mailing list.

DATED this 24th day of August, 2006.

BY THE COURT:

~~BROOKE C. WELLS~~ Samuel Alba
United States Magistrate

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2006 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Gregory C. Diamond
Assistant United States Attorney
gregory.diamond@usdoj.gov

Michael P. Studebaker, Esq.
2550 Washington Blvd
Ogden, UT 84401-3126

/s/ S. Mumford
Secretary

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

AARON HELBACH,	)	
	)	
Petitioner,	)	Case No. 2:06-CV-89 TS
	)	
v.	)	District Judge Ted Stewart
	)	
STATE OF UTAH et al.,	)	**O R D E R**
	)	
Respondents.	)	Magistrate Judge David Nuffer

Petitioner, Aaron Helbach, has filed a *habeas corpus* petition. *See* 28 U.S.C.S. § 2254 (2006).

IT IS HEREBY ORDERED that, by October 13, 2006, the Utah Attorney General must respond to the petition.

DATED this 28th day of August, 2006.

BY THE COURT:

DAVID NUFFER
United States Magistrate Judge

CHARLES L. ROBERTS (A5137)
JAMES B. BELSHE (A9826)
WORKMAN NYDEGGER
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 533-9800
Facsimile: (801) 321-1707

Attorneys for Defendant
INTERNATIONAL PIGMENT & COLOR CORPORATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

NUTRACEUTICAL CORPORATION, a Delaware corporation Plaintiff, v. INTERNATIONAL PIGMENT & COLOR CORPORATION, a Florida corporation, Defendant.	Civil Action No. 2:06CV00455 **[PROPOSED] ORDER RE DEFENDANT INTERNATIONAL PIGMENT'S APPLICATION FOR WITHDRAWAL OF COUNSEL** The Honorable Judge Cassell

THIS MATTER is before the Court on Defendant International Pigment & Color Corporation's ("International Pigment") Application for Withdrawal of Counsel. Having considered the written submissions and pleadings of record, in connection with the above-referenced application, and good cause appearing therefore IT IS HEREBY ORDERED that Defendant's Application is GRANTED in all respects.

DATED this 24th day of August, 2006.

Honorable Judge Cassell
United States District Court
Northern District of Utah

SUBMITTED BY:

/s/ James B. Belshe
Charles L. Roberts
James B. Belshe
WORKMAN NYDEGGER
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111

Attorneys for
International Pigment & Color Corp.
Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **[PROPOSED] ORDER RE: DEFENDANT INTERNATIONAL PIGMENT'S APPLICATION FOR WITHDRAWAL OF COUNSEL** was served on this _23___ day of August, 2006, a true copy thereof to its attorneys of record:

Peggy A Tomsic (Via Hand Delivery)
Eric K. Schnibbe
Kristopher S. Kaufman
TOMSIC LAW FIRM, LLC
136 East South Temple, Suite 800
Salt Lake City, UT 84111

Mike Kafer (Via U.S. Mail)
International Pigment & Color Corporation
3187 Cecelia Drive
Apopka, Florida 32703

/s/ Bonnie Larsen

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

SHAWN ALLRED,	)	
	)	
Plaintiff,	)	Case No. 2:06-CV-555 TC
	)	
v.	)	District Judge Tena Campbell
	)	
BRYCE K. BRYNER et al.,	)	**O R D E R**
	)	
Defendants.	)	Magistrate Judge Samuel Alba

Plaintiff, Shawn Allred, filed a *pro se* prisoner civil rights complaint.[1] The Court has already granted Plaintiff's request to proceed without prepaying the entire filing fee.

Even so, Plaintiff must eventually pay the full $350.00 filing fee required.[2] Plaintiff must start by paying "an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to [his inmate] account . . . or . . . the average monthly balance in [his inmate] account for the 6-month period immediately preceding the filing of the complaint."[3] Under this formula, Plaintiff must pay $5.72. If this initial partial fee is not paid within thirty days, or if Plaintiff has not shown he has no means to pay the initial partial filing fee, the complaint will be dismissed.

---

[1]*See* 42 U.S.C.S. § 1983 (2006).

[2]*See* 28 *id.* § 1915(b)(1).

[3]*Id.*

Plaintiff must also complete the attached "Consent to Collection of Fees" form and submit the original to the inmate funds accounting office and a copy to the Court within thirty days so the Court may collect the balance of the entire filing fee Plaintiff owes. Plaintiff is also notified that pursuant to Plaintiff's consent form submitted to this Court, Plaintiff's correctional facility will make monthly payments from Plaintiff's inmate account of twenty percent of the preceding month's income credited to Plaintiff's account.

IT IS THEREFORE ORDERED that:

(1) Although the Court has already granted Plaintiff's application to proceed *in forma pauperis*, Plaintiff must still eventually pay $350.00, the full amount of the filing fee.

(2) Plaintiff must pay an initial partial filing fee of $5.72 within thirty days of the date of this Order, or his complaint will be dismissed.

(3) Plaintiff must make monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account.

(4) Plaintiff shall make the necessary arrangement to give a copy of this Order to the inmate funds accounting office at Plaintiff's correctional facility.

(5) Plaintiff shall complete the consent to collection of fees and submit it to the inmate funds accounting office at

Plaintiff's correctional facility and also submit a copy of the signed consent to this Court within thirty days from the date of this Order, or the complaint will be dismissed.

DATED this 28th day of August, 2006.

BY THE COURT:

SAMUEL ALBA
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Shawn Allred (Case No. 2:06-CV-555 TC), understand that even though the Court has granted my application to proceed *in forma pauperis* and filed my complaint, I must still eventually pay the entire filing fee of $350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I, Shawn Allred, hereby consent for the appropriate institutional officials to withhold from my inmate account and pay to the court an initial payment of $5.72, which is 20% of the greater of:

(a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or

(b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches $10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the $350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

_____
Signature of Inmate
Shawn Allred

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

SHAWN ALLRED,	)	
	)	
Plaintiff,	)	Case No. 2:06-CV-600 PGC
	)	
v.	)	District Judge Paul Cassell
	)	
STEPHEN R. MCCAUGHEY et al.,	)	**O R D E R**
	)	
Defendants.	)	

Plaintiff, Shawn Allred, moves for an extension of time in which to comply with the Court's July 20, 2006, order that he file with the Court within thirty days a certified copy of his inmate trust fund account statements covering the dates between February 15, 2006 and May 27, 2006.

At this point, Plaintiff has already had additional days in which to comply. However, IT IS HEREBY ORDERED that Plaintiff's motion for a time extension is granted. If Plaintiff does not submit his inmate account statements by September 15, 2006, his case will be dismissed.

DATED this 24th day of August, 2006.

BY THE COURT:

SAMUEL ALBA
United States Chief Magistrate Judge

United States District Court
for the
District of Utah
August 28, 2006

******MAILING CERTIFICATE OF THE CLERK******

RE: Shawn Allred v Stephen R. McCaughey
2:06cv600 PGC

Inmate Shawn Allred, # 203943
Weber County Jail, F-503
PO Box 14000
Ogden, UT 84412

Kim Forsgren,

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

GARTH D. BARNEY,	)	
	)	
Plaintiff,	)	Case No. 2:06-CV-611 PGC
	)	
v.	)	District Judge Paul Cassell
	)	
OFFICER FINLAY et al.,	)	**O R D E R**
	)	
Defendants.	)	Magistrate Judge Samuel Alba

Plaintiff, Garth D. Barney, filed a *pro se* prisoner civil rights complaint.[1] The Court has already granted Plaintiff's request to proceed without prepaying the entire filing fee.

Even so, Plaintiff must eventually pay the full $350.00 filing fee required.[2] Plaintiff must start by paying "an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to [his inmate] account . . . or . . . the average monthly balance in [his inmate] account for the 6-month period immediately preceding the filing of the complaint."[3] Under this formula, Plaintiff must pay $19.80. If this initial partial fee is not paid within thirty days, or if Plaintiff has not shown he has no means to pay the initial partial filing fee, the complaint will be dismissed.

---

[1] *See* 42 U.S.C.S. § 1983 (2006).

[2] *See* 28 *id.* § 1915(b)(1).

[3] *Id.*

Plaintiff must also complete the attached "Consent to Collection of Fees" form and submit the original to the inmate funds accounting office and a copy to the Court within thirty days so the Court may collect the balance of the entire filing fee Plaintiff owes. Plaintiff is also notified that pursuant to Plaintiff's consent form submitted to this Court, Plaintiff's correctional facility will make monthly payments from Plaintiff's inmate account of twenty percent of the preceding month's income credited to Plaintiff's account.

IT IS THEREFORE ORDERED that:

(1) Although the Court has already granted Plaintiff's application to proceed *in forma pauperis*, Plaintiff must still eventually pay $350.00, the full amount of the filing fee.

(2) Plaintiff must pay an initial partial filing fee of $19.80 within thirty days of the date of this Order, or his complaint will be dismissed.

(3) Plaintiff must make monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account.

(4) Plaintiff shall make the necessary arrangement to give a copy of this Order to the inmate funds accounting office at Plaintiff's correctional facility.

(5) Plaintiff shall complete the consent to collection of fees and submit it to the inmate funds accounting office at

Plaintiff's correctional facility and also submit a copy of the signed consent to this Court within thirty days from the date of this Order, or the complaint will be dismissed.

DATED this 25th day of August, 2006.

BY THE COURT:

SAMUEL ALBA
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Garth Barney (Case No. 2:06-CV-611 PGC), understand that even though the Court has granted my application to proceed *in forma pauperis* and filed my complaint, I must still eventually pay the entire filing fee of $350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I, Garth Barney, hereby consent for the appropriate institutional officials to withhold from my inmate account and pay to the court an initial payment of $19.80, which is 20% of the greater of:

(a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or

(b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches $10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the $350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions

imposed by the District Court.

_____

Signature of Inmate
Garth Barney

United States District Court
for the
District of Utah
August 28, 2006

******MAILING CERTIFICATE OF THE CLERK******

RE: Garth D. Barney v Officer Finlay
2:06cv611 PGC

Inmate Garth D. Barney
#20886 W HOSP 1
Utah State Prison
PO Box 250
Draper, UT 84020

Kim Forsgren,

JONATHAN A. DIBBLE (A0881)
PAUL C. BURKE (A7826)
RAY, QUINNEY & NEBEKER, P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145
Telephone: (801) 532-1500

Attorneys for Defendant Willard InterContinental Washington D.C.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

BASIC RESEARCH, L.L.C., a Utah limited liability company, Plaintiff vs. **WILLARD INTERCONTINENTAL WASHINGTON D.C.**, and John Doe Corporations I-X. Defendants.	**ORDER GRANTING JOINT MOTION TO EXTEND TIME TO RESPOND TO COMPLAINT** Civil No. 2:06CV00626TS Judge: Ted Stewart

Based on the stipulation of the parties, and for good cause appearing, this Court orders that the time for Defendant Willard InterContinental Washington D.C. to answer, move, or otherwise plead in response to the Complaint shall be extended until September 5, 2006.

DATED this 28th day of August, 2006.

BY THE COURT:

United States District Court Judge

APPROVED AS TO FORM:

BASIC RESEARCH, L.L.C.

Jason M. Kerr

Attorney for Basic Research, L.L.C.

Signed copy of document bearing signature of Other Attorney is being maintained in the office of the Filing Attorney

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

WORLD HEALTH PRODUCTS, LLC, a Utah limited liability company, Plaintiff, vs. CHELATION SPECIALISTS, LLC, a Utah limited liability company, RONALD PARTAIN, JR., an individual, RONALD PARTAIN, SR., an individual, PATRICK HAYES, an individual, and DOES 1 through 5, Defendants.	ORDER & MEMORANDUM DECISION Case No. 2:06 CV 633

Plaintiff World Health Products, LLC, created and now markets a suppository product called Detoxamin. The Detoxamin suppository provides one method by which an individual can pursue chelation therapy. Chelation therapy involves the removal of heavy metals and other materials from the body.

Now before the court is World Health's motion for a preliminary injunction barring Defendant Chelation Specialists, LLC, as well as other individually named defendants (collectively "Chelation") from marketing a competing product, called Kelatox. World Health alleges that Kelatox infringes a patent held by World Health and also claims that Chelation misappropriated World Health's customer list in an effort to steal customers.

World Health is unable to establish that it will likely succeed on the merits of its case.

Additionally, consideration of the harm that an injunction would cause, as well as the public's interest, leads to the conclusion that an injunction is not warranted.

Background

People have utilized chelation therapy for many years. But until World Health went to market with its product, chelation therapy was confined to oral and intravenous administration. Seeking a more desirable administration solution, World Health developed Detoxamin, an anal suppository chelation treatment. This method of delivery had the advantage of a higher absorption rate than oral administration and was more attractive to some users of chelation therapy than intravenous delivery.

According to Kendal Svedeen, a managing member of World Health, the suppository market for chelation therapy was virtually created by World Health. As a result, World Health has spent considerable sums of money to test the efficacy of its product and to market its product to distributors, doctors, and individuals.

To aid in its sales and promotional activities, World Health associated itself with Patrick Hayes. World Health did not directly hire Mr. Hayes as an employee. Rather, World Health engaged Trident Consulting, LLC, a company that Mr. Hayes had previously created. Although the employment situation was structured in this somewhat unusual way, Mr. Hayes was essentially an employee of World Health. Mr. Hayes reported directly to Mr. Svedeen and was expected to be in World Health's office from eight to five each work day. While working at World Health, Mr. Hayes was constantly in contact with World Health customers. He fielded a high volume of telephone enquires and by all accounts served as the primary contact of World Health customers.

While Mr. Hayes was away on vacation, Mr. Svedeen received a phone call that caused

him great concern. The caller requested information about Kelatox, which the caller indicated was a chelation therapy product administered in suppository form. After finishing the phone conversation, Mr. Svedeen performed an Internet search and discovered that Kelatox was being offered as a low-cost alternative to Detoxamin. Further investigation revealed that Mr. Hayes, while working at World Health, had spent several months creating a new company that would directly compete with World Health.

Mr. Hayes had started the company, Chelation, with a former employee of World Health, Ronald Partain, Jr. Also involved was Ronald Partain, Sr., who had previously made suppositories on behalf of World Health and was a member of World Health's board of directors at the time of Chelation's creation. Mr. Svedeen confronted Mr. Hayes and immediately terminated Mr. Hayes's employment relationship with World Health.

World Health then filed this lawsuit, claiming that Chelation's product, Kelatox, infringes on a patent held by World Health. In addition to the patent infringement claim, World Health asserts several causes of action, including misappropriation of trade secrets, unfair competition, and tortious interference with business relationships. World Health also filed a request for a preliminary injunction prohibiting Chelation from infringing World Health's patent and requiring Chelation to return and discontinue using all misappropriated trade secrets.

Analysis

To obtain injunctive relief, the moving party must establish that: (1) it will likely prevail on the merits of the litigation; (2) it will suffer irreparable injury unless an injunction is issued; (3) its threatened injury outweighs any harm the proposed injunction may cause to the opposing party; and (4) an injunction, if issued, would not be adverse to the public interest. See Elam Const., Inc. v. Regional Transp. Dist. 129 F.3d 1343, 1346-47 (10th Cir. 1997). "Because a

preliminary injunction is an extraordinary remedy, the movant's right to relief must be clear and unequivocal." Dominion Video Satellite, Inc. v. EchoStar Satellite Corp., 269 F.3d 1149, 1154 (10th Cir. 2001) (citing Kikumura v. Hurley, 424 F.3d 950, 955 (10th Cir. 2001)).

Although World Health alleges numerous causes of action in its complaint, it has only sought preliminary injunctive relief on its patent infringement and misappropriation of trade secrets claims.

I. Likelihood of Success on the Merits

A. Patent Infringement

"[F]or a court to find infringement, the plaintiff must show the presence of every element or its substantial equivalent in the accused device." Wolverine World Wide, Inc. v. Nike, Inc., 38 F.3d 1192, 1199 (Fed. Cir. 1994). When faced with a request for preliminary injunctive relief in a patent infringement dispute, a comprehensive and final claim construction is not required. See Sofamor Danek Group, Inc. v. DePuy-Motech, Inc., 74 F.3d 1216, 1221 (Fed. Cir. 1996) ("[T]he trial court has no obligation to interpret [a] claim . . . conclusively and finally during a preliminary injunction proceeding."); cf. Black & Decker, Inc. v. Hoover Serv. Ctr., 886 F.2d 1285, 1296 n. 16 (Fed. Cir. 1989) ("Decisions on preliminary relief do not preclude trial on the merits . . . though preclusion may be appropriate when the evidence is the same . . .").

World Health alleges that Chelation is infringing patent number 5,602,180 (the "'180 patent"), which is held by World Health. The '180 patent claims: "A suppository for chelation therapy, said suppository comprising an inert meltable carrier containing dissolved or suspended disodium EDTA and a controlled-release matrix for releasing the complexes into the body over a period of three to four hours after anal administration of the suppository." (United States Patent Number 5,602,180, Feb. 11, 1997, attached as Ex. A to Memo. in Supp. of Defs.' Mot. for Part.

Summ. J. & in Opp'n to Plf.'s Mot. for Prelim. Injunc. (dkt. #32-1)[hereinafter Memo. in Opp'n]).

"It is a bedrock principle of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude." Phillips v. AWH Corp., 415 F.3d 1303, 1312 (Fed. Cir. 2005) (internal quotation marks and quotation omitted). Words used in a patent claim "are generally given their ordinary and customary meaning." Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996). The Federal Circuit has frequently stressed that claim construction should not occur in a vacuum and that courts should consider the language of the claims in light of the patent's specification and prosecution history. See Phillips, 415 F.3d at 1317. Indeed, in Phillips, the Federal Circuit highlighted the value of examining a patent's prosecution history when interpreting the patent's claims:

> The prosecution history, which we have designated as part of the 'intrinsic evidence,' consists of the complete record of the proceedings before the [Patent and Trademark Office] . . . . [T]he prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be.

Id.

In this case, the claim language, when viewed in light of the patent's prosecution history, indicates that World Health is unlikely to successfully argue that Chelation's Kelatox product infringes the '180 patent. World Health alleges that Kelatox is identical to World Health's Detoxamin product. Further, and more importantly, World Health asserts that the '180 patent covers the Detoxamin formula and, by extension the Kelatox formula as well. The evidence does indicate that the two products are virtually identical. Both are anal suppositories designed to provide chelation therapy. Both utilize an inert carrier that contains calcium disodium ethylene

diamine tetraacetic acid. Both use a controlled-release matrix. And, although Chelation claims that Kelatox is distributed through the body at a slightly quicker rate than Detoxamin, the treatment times associated with the products are similar.

While World Health may be correct that Kelatox is virtually indistinguishable from Detoxamin, its claim of patent infringement is not likely to succeed because the products sold by both World Health and Chelation differ from the suppository claimed in the '180 patent. Specifically, both the Detoxamin and Kelatox suppositories deliver calcium disodium EDTA, while the '180 patent claims only delivery of disodium EDTA. While this distinction can be seen on the face of the patent itself, the prosecution history shows that the distinction between calcium disodium EDTA and disodium EDTA was recognized by the inventor of the '180 patent and that the inventor expressly disclaimed the use of calcium disodium EDTA in pursuing the patent.

For example, after the patent application was initially rejected, the applicant responded with an amendment to the application, hoping to allay the concerns that prompted the initial rejection. The applicant took great pains to stress that the presence of calcium in the EDTA preparation would severely hamper the purpose of the suppository, rendering it ineffective for its intended purpose. For example, the applicant stated that "[i]n the lower bowel, the disodium EDTA would be a highly effective chelating agent for a suppository, whereas Calcium EDTA would not be." (Amendment 2, attached as Ex. C. to Memo. in Opp'n.) The applicant also stated that "[t]he use of Calcium EDTA, as in the Rosenberg patent, would be completely ineffective in an anal suppository." (Id. at 3.) Most tellingly, the applicant stressed the ineffectiveness of calcium disodium EDTA considering the purpose the suppository was designed to serve. "The disease target of the present invention is atherosclerosis. The disease . .

. is a chronic metabolic disorder in which calcium ion plays a role in the formation of arterial plaque . . . . EDTA administration relieves the disorder by removing calcium from the blood stream." (Id. at 3-4.) The parties' filings with the court indicate that calcium disodium EDTA would not effectively remove calcium from the blood stream because calcium is already present in the compound, which would prevent the compound from attaching itself to additional calcium found in the bloodstream.

In short, the plain language of the patent, combined with the prosecution history, support the conclusion that the claims of the '180 patent are expressly limited to disodium EDTA and that the use of calcium disodium EDTA is not covered. Accordingly, it is not likely that World Health can exclude Chelation's production of Kelatox by relying on the '180 patent.

B. Trade Secret Misappropriation

World Health claims that its customer list is a trade secret and that Chelation misappropriated World Health's customer information to facilitate the solicitation of World Health customers. Chelation maintains that it has no copies, tangible or otherwise, of the customer information. More fundamentally, Chelation argues that World Health's customer list cannot be characterized as a trade secret because World Health did not make a reasonable effort to keep the list secret.

The threshold issue in determining whether a trade secret has been misappropriated is "'whether, in fact, there is a trade secret to be misappropriated.'" Envirotech Corp. v. Callahan, 872 P.2d 487, 494 (Utah Ct. App. 1994) (quoting Microbiological Research Corp. v. Muna, 625 P.2d 690, 696 (Utah 1981)). A trade secret is information that: "(a) derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the

subject of efforts that are reasonable under the circumstances to maintain its secrecy." Utah Code Ann. § 13-24-2. "The burden is on the plaintiff to prove the existence of a trade secret, and there is no presumption in his favor." MedSpring Group, Inc. v. Feng, 368 F. Supp. 2d 1270, 1276 (D. Utah 2005).

Chelation argues that World Health cannot met its burden because the evidence establishes that no reasonable efforts were made to maintain the secrecy of the customer list. Evidence indicating that a company did not require its employees to sign confidentiality agreements or otherwise restrain access to sensitive corporate information weighs against the conclusion that such information is a trade secret. Cordell v. Berger, 2:01-CV-710C, 2001 WL 1516742, at * 3 (D. Utah, Nov. 27, 2001) (plaintiff did not use confidentiality agreements or limit employee and volunteer access to allegedly secret information contained in a database). Another relevant factor is whether tangible copies of the allegedly secret information were marked as confidential or otherwise contained an indication of the sensitive nature of the information. See id. ("Neither the Graduate Base nor print-outs made from it are marked in any manner to indicate their confidentiality.").

At the time the events giving rise to this litigation occurred, World Health did not require its employees to sign any type of confidentiality or non-competition agreement. The evidence indicates that World Health employees were free to pursue other projects while employed by World Health. Further, print outs of the customer list were regularly made and placed on the desk of Mr. Hayes. Print outs of the customer list were typically thrown in the garbage without first being shredded. The list itself was not marked as confidential in both its electronic and tangible form and did not otherwise contain an indication that its contents were secret. Also, while the computer database containing the customer list was password protected, the testimony

at the preliminary injunction hearing established that the various passwords were known by all employees and that employees commonly wrote down the passwords of other employees. In addition, World Health would regularly provide the names of customers that served as distributors of Detoxamin when they received telephone inquires requesting that information. World Health also imported a significant portion of its customer list into a separate database that was not password protected.

Mr. Sveeden testified that draconian efforts to maintain secrecy were not needed because World Health is a small company and he trusted his employees. But, even considering the small size of World Health, the evidence establishes that next to no meaningful effort was made to maintain the secrecy of the customer list. Accordingly, it is unlikely that World Health can establish the existence of a trade secret and its likelihood of successfully pursuing its trade secret misappropriation claim is not high.

II. Other Preliminary Injunction Factors

The conclusion that World Health is not likely to succeed on the merits of its patent infringement and trade secret misappropriation claims affects the consideration of the final three preliminary injunction factors: the presence of irreparable harm, a weighing of the balance of potential harms, and the public's interest, see Medspring Group, 368 F. Supp. 2d at 1276. Consideration of these factors does not weigh in favor of issuing an injunction in this case.

A. Irreparable Harm

World Health claims that it will suffer irreparable harm in the form of lost business and damage to its reputation and good will if an injunction is not issued. "To constitute irreparable harm, an injury must by certain, great, and actual." Chemical Weapons Working Group, Inc. v. U.S. Dep't of the Army, 963 F. Supp. 1083, 1095 (D. Utah 1994). Damage to a company's

reputation or good will is frequently considered irreparable because of the difficulties involved in adequately compensating such loss monetarily. See Dominion Video Satellite, 269 F.3d at 1156-57. But in this case, it is unlikely that World Health has suffered a legally cognizable injury flowing from Chelation's marketing of calcium disodium EDTA or from Chelation's alleged misappropriation of World Health's customer list. See Holly Sugar Corp. v. Goshen County Co-op. Beet Growers Ass'n, 725 F.2d 564, 568 (10th Cir. 1984) ("A court cannot grant a remedy, legal or equitable, unless there has been a legal injury; mere damage is insufficient."); Cordell, 2001 WL 1516742, at *4 ("As the Graduate Base is not a trade secret, the Bergers' actions do not violate Harmony's legal rights, and, accordingly, do not cause Harmony irreparable harm.").

B. Balance of Injuries to the Parties

World Health will certainly be harmed if Chelation is allowed to continue its marketing of Kelatox. But Chelation will undoubtedly be harmed if it is enjoined from marketing and selling its product. The evidence shows that World Health enjoys a healthy rate of gross monthly sales, bringing in approximately ten times the amount of money earned by Chelation. The effect of enjoining Chelation's operations would potentially result in the death of the company. While the negative effect of Chelation's business on World Health cannot be ignored, the balance of the harms weighs against issuing an injunction in this case.

C. Public Interest

The public has a substantial interest in assuring free competition in the marketplace. World Health has not established that Chelation has impermissibly gained a marketplace advantage either through patent infringement or trade secret misappropriation. Accordingly, the public interest weighs against enjoining Chelation's activities on those grounds. See Abbott Labs. v. Andrx Pharms., Inc., 452 F.3d 1331, 1348 (Fed. Cir. 2006) ("Although the public

interest inquiry is not necessarily or always bound to the likelihood of success on the merits . . . we agree . . . that the public interest is best served by enforcing patents that are likely valid and infringed. As Abbott did not establish a likelihood of success on the merits, we conclude that the public interest is best served by denying the preliminary injunction."); Cordell, 2001 WL 1516742, at *5 ("The free exchange of information in the public domain drives competition and our economy. An injunction prohibiting the Bergers' use of the Graduate Base would act to restrain trade without any accompanying benefit. The public interest weighs in favor of the Defendants.").

Conclusion

World Health has failed to meet the heavy burden applicable to preliminary injunctive relief. While World Health may ultimately prevail on some, or perhaps even all, of its claims, it is has not established the likelihood of its success on its patent infringement and trade secret misappropriation claims. Further, consideration of both the balance of the parties' potential harms and the public's interest support the conclusion that a preliminary injunction is inappropriate in this case. Accordingly, World Health's Motion for Preliminary Injunction is DENIED.

DATED this 28th day of August, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

KLEIN-BECKER USA, LLC, a Utah Limited Liability Company; KLEIN-BECKER IP HOLDINGS, LLC, a Nevada Limited Liability Company; and BASIC RESEARCH, LLC, a Utah Limited Liability Company, Plaintiffs, vs. VITABASE.COM, LLC, an expired Georgia Limited Liability Company; COAD INC., a Georgia Corporation; OB LABS; GREG HOWLETT, an individual, and JOHN DOES 1-10, Defendants.	ORDER DENYING PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND SETTING DATES FOR A PRELIMINARY INJUNCTION HEARING Case No. 2:06-CV-00668 PGC

On August 11, 2006, plaintiff Klein-Becker USA filed a complaint alleging trademark infringement, false advertising under the Lanham Act, copyright infringement, tortious interference with existing and prospective economic relations, unfair competition and civil conspiracy against the named defendants. Klein-Becker alleged that the named defendants had violated numerous federal and state statutes by manufacturing, distributing and selling anti-

stretch mark and anti-aging products that are the same as those owned by Klein-Becker. Klein-Becker also claimed that defendants use bait-and-switch tactics on their website by advertising and discussing Klein-Becker's product and then offering their own products comparable to Klein-Becker's. Among other claims, Klein-Becker also alleged that it was entitled to a preliminary, and thereafter permanent, injunction against the defendants because it would suffer immediate and irreparable harm.[1]

On August 18, 2006, Klein-Becker moved for a temporary restraining order [#7], and also filed a memorandum with its motion [#8]. Due to the urgency expressed by Klein-Becker's counsel, the court promptly acted on Klein-Becker's submitted filings. The court found that Klein-Becker laid out a long explanatory discussion of the underlying facts of this case in its memorandum in support of the temporary restraining order. It also noted that Klein-Becker alleged irreparable harm that it might suffer if it is denied the temporary restraining order. But, based on the filings submitted to the court, it was clear that Klein-Becker had not followed Fed. R. Civ. P. Rule 65(b) because *in its filings with the court* it failed to certify to the court in writing its efforts made to give the opposing party notice and the reasons supporting the claim that notice should not be required. Klein-Becker provided no notice to the court in any of its documents that it had already contacted the defendants, nor did it indicate in any discussions with the court that it had sufficiently met this mandatory portion of the rule. Accordingly, the court had no discretion but to deny the previous motion for a temporary restraining order.

Now that Klein-Becker has complied with the Federal Rules of Civil Procedure, the court

[1] Complaint, at 30 (Aug. 11, 2006).

looks anew at the filings. As stated in its previous order, to merit a temporary restraining order, much like a preliminary injunction, Klein-Becker must establish "(1) a substantial likelihood of prevailing on the merits; (2) irreparable injury to the movant if the injunction is denied the injunction; (3) the threatened injury outweighs the injury to the party opposing the preliminary injunction; and (4) the injunction would not be adverse to the public interest."[2] Granting a temporary restraining order is, of course, an "extraordinary" remedy.[3]

At first glance, Klein-Becker has sufficiently alleged it will prevail on the merits of its claim under various federal and state statutes. And, according to the filings, Klein-Becker alleges irreparable harm via economic loss. But the Tenth Circuit has stated that "simple economic loss usually does not . . . constitute irreparable harm [since] such losses are compensable by monetary damages."[4] Klein-Becker does allege various "bait-and-switch" tactics by the defendants, which may constitute certain reputational harms. At the end of the day, however, such harm is still viably compensated primarily through economic means, and the court is wary of granting a temporary restraining order without other good cause. Loss of economic opportunities, while certainly harmful, is generally quite compensable through monetary means. In the court's view, such a loss generally does not warrant the extraordinary remedy of a temporary restraining order.

Therefore, the court finds that Klein-Becker has failed to demonstrate that it will suffer

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[2] *Country Kids 'N City Slicks, Inc. v. Sheen*, 77 F.3d 1280, 1283 (10th Cir. 1996).

[3] *See SCRS ILC, Inc. v. Visa USA, Inc.,* 936 F.2d 1096, 1098 (10th Cir. 1991).

[4] *Heideman v. South Salt Lake City*, 342 F.3d 1182, 1189 (10th Cir. 2003).

any harm that cannot be remedied with an award of monetary damages should it prevail upon its claims. Accordingly, the court denies Klein-Becker's motion for temporary restraining order, but will entertain Klein-Becker's motion in the alternative for a preliminary injunction.

The court's denial of Klein-Becker's motion for a temporary restraining order does not necessarily dictate denial of its motion for preliminary injunction. As stated previously, the court does not view the "practical effect" of denying this temporary restraining motion as any decision on the merits of a preliminary injunction motion now filed by Klein-Becker.[5] Indeed, there is every indication that the court "contemplates a prompt hearing on a preliminary injunction" now that Klein-Becker has served the defendants with the complaint and seeks relief from the court through that avenue.[6]

Given that the extraordinary relief of a temporary restraining order does not appear appropriate to the court because monetary compensation will likely alleviate the majority of Klein-Becker's harms, the motion for a temporary restraining order is again DENIED [#10]. The court is inclined, however, to revisit these issues in the context of Klein-Becker's motion in the alternative for a preliminary injunction [#10]. Klein-Becker's motion for leave to file excess pages is GRANTED [#13]. The court anticipates that it will be able to resolve this motion largely on the written submissions of the parties. Any evidentiary support, including affidavits in support or opposition to this motion, shall be provided to the court in filings by the dates stated

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[5] *See Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 269 F.3d 1149, 1154 (10th Cir. 2001); *United States v. Colorado*, 937 F.2d 505, 507 (10th Cir. 1991).

[6] *Office of Pers. Mgmt. v. Am. Fed'n of Gov't Employees, AFL-CIO*, 473 U.S. 1301, 1305 (1985).

below. Klein-Becker is invited to file any supplemental memorandum in support of a preliminary injunction, if it so chooses, by September 6, 2006. Defendants are to provide any response to the court on Klein-Becker's motion for preliminary injunction [#11] by September 19, 2006. A hearing is scheduled on the preliminary injunction for September 26, 2006, at 10:00 A.M.

SO ORDERED.

DATED this 28th day of August, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

UNITED STATES DISTRICT COURT

Central Division **District of** UTAH

Ross Howard

Plaintiff

V.

Jo Anne Barnhart, in her capacity as the Commissioner of the Social Security Administration

Defendant

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

CASE NUMBER: 2:6cv714 TC

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 25th day of August, 2006.

s/David Nuffer
Signature of Judge

Magistrate Judge David Nuffer
Name and Title of Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MANUEL DE JESUS MENJIVAR, Plaintiff,	)	Case No.
v.	)	
SHERIFF KENNARD et al., Defendants.	)	**O R D E R**

Plaintiff/inmate, Manuel De Jesus Menjivar, submits a *pro se* civil rights case.[1] Plaintiff applies to proceed without prepaying his filing fee.[2] However, Plaintiff has not as required by statute submitted "a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the *6-month period immediately preceding the filing of the complaint* . . . obtained from the appropriate official of each prison at which the prisoner is or was confined."[3]

IT IS HEREBY ORDERED that Plaintiff's application to proceed without prepaying his filing fee is granted.

So that the Court may calculate Plaintiff's initial partial filing fee, IT IS ALSO ORDERED that Plaintiff shall have thirty days from the date of this Order to file with the Court a certified copy of his inmate trust fund account statement(s). If

[1]*See* 42 U.S.C.S. § 1983 (2006).

[2]*See* 28 *id.* § 1915.

[3]*See id.* § 1915(a)(2) (emphasis added).

Plaintiff was held at more than one institution during the past six months, he shall file certified trust fund account statements (or institutional equivalent) from the appropriate official at each institution where he was confined. The trust fund account statement(s) must show deposits and average balances for each month. If Plaintiff does not fully comply, his complaint will be dismissed.

DATED this 25 day of August, 2006.

BY THE COURT:

Brooke C. Wells

BROOKE C. WELLS
United States Magistrate Judge

AO 240A (Rev. 12/03)

UNITED STATES DISTRICT COURT

Central Division **District of** UTAH

John A. Campbell

Plaintiff

V.

S.S. Administration

Defendant

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

Judge J. Thomas Greene
DECK TYPE: Civil
DATE STAMP: 08/28/2006 @ 12:12:25
CASE NUMBER: 2:06CV00717 JTG

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 28th day of August, 2006.

Signature of Judge

Magistrate Judge Samuel Alba
Name and Title of Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. JOSE VELASQUEZ-MEZA, Defendant.	ORDER Case No. 2:96 CR 149 TC

Mr. Velasquez-Meza has filed a Motion to Correct Presentence Investigation Report. On May 5, 2005, Mr. Velasquez-Meza filed a petition pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct his sentence. His petition was denied because it was time-barred. There appears to be no basis for Mr. Velasquez-Meza's Motion to Correct Presentence Investigation Report and therefore the same is denied.

DATED this 25th day of August, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH – CENTRAL DIVISION

THE STATE OF UTAH, ex rel., MARK L. SHURTLEFF, in his capacity as ATTORNEY GENERAL OF THE STATE UTAH Plaintiff, vs. R.J. REYNOLDS TOBACCO COMPANY, et al., Defendants.	**ORDER** Case No. 2:96CV829 Judge Dee Benson

Having shown good cause, the Court hereby orders that Plaintiff State of Utah's ex parte motion to change the status of this case on the court's docket to "open," to substitute current Utah Attorney General Mark L. Shurtleff in place of former Attorney General Jan Graham pursuant to Fed. R. Civ. P. 25(d), and to amend the caption to remove the "ex rel." designation is hereby GRANTED.

IT IS SO ORDERED.

DATED this 25th day of August, 2006.

Dee Benson

Dee Benson
United States District Judge

BRETT L. TOLMAN, United States Attorney (#8821)
JEANNETTE F. SWENT, Assistant United States Attorney (#6043)
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Salt Lake City, Utah 84111-1506
Telephone (801) 524-5682

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	ORDER
	)	
vs.	)	
	)	
ANTHONY DAVID LEICHTLE,	)	Case No. 2:99CR00664-001
	)	
Defendant,	)	Honorable Ted Stewart

The Court, having received the Stipulation of the parties dated August 8, 2006 and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Judgment was entered on March 30, 2000 in the total sum of $8,228.59 in favor of the United States of America (hereafter the "United States") and against Anthony David Leichtle (hereafter "Leichtle").

[redacted]

2. Leichtle has agreed to pay and the United States has agreed to accept monthly installment payments from him in the amount of $100.00 commencing on September 1, 2006 and continuing thereafter on the 1st day of each month for a period of 12 months. At the end of said time period, and yearly thereafter, Leichtle shall submit a current financial statement to the United States Attorney's Office. This payment schedule will be evaluated and may be modified, based on the documented financial status of Leichtle.

3. In addition to the regular monthly payment set forth in paragraph 2, above, Leichtle has agreed that the United States may submit his debt in the above-captioned case to the State of Utah and the U.S. Department of Treasury for inclusion in the State Finder program and the Treasury Offset program. Leichtle understands that under these programs, any state or federal payment that he would normally receive may be offset and applied toward the debt in the above-captioned case.

4. Leichtle shall submit all financial documentation in a timely manner and keep the United States Attorney's Office apprised of the following:

a. Any change of address; and

b. Any change in employment.

5. The United States has agreed to refrain from execution on the judgment so long as Leichtle complies strictly with the agreement set forth in paragraphs 2 and 4, above. In the event Leichtle fails to comply strictly with the terms set forth in the Stipulation dated August 8, 2006, the United States may move the Court ex parte for a writ of execution and/or a writ of garnishment or any other appropriate order it deems necessary for the purpose of

obtaining satisfaction of the judgment in full.

DATED this 22nd day of August, 2006.

BY THE COURT:

Ted Stewart, Judge
United States District Court

APPROVED AS TO FORM:

ANTHONY DAVID LEICHTLE
Defendant

[redacted]

Thomas M. Melton (4999)
Karen L. Martinez (7914)
Securities and Exchange Commission
15 West South Temple Street
Suite 1800
Salt Lake City, Utah 84101
Telephone: (801) 524-5796

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v.		Civil No. 2:99-CV-0692K
THE COMMONWEALTH GROUP, LLC; and NED RICHARD HART, Defendants, TICONDEROGA LEASING, HEALTHCARE CONSORTIUM 3, and INTERNATIONAL LEASE MANAGEMENT, LLC, Relief Defendants.		~~[PROPOSED]~~ **ORDER TO DISBURSE FUNDS** Judge Dale A. Kimball

Plaintiff, Securities and Exchange Commission (the "Commission"), by and through its counsel of record, having moved for the disbursement of funds, no response having been received and good cause appearing therefore,

I.

IT IS HEREBY ORDERED that the funds in the amount of $72,833.94 (the amount held in the Court's registry as of May 11, 2006, the date of the most recent maturity, plus any newly accrued interest and less the Court's ten percent (10%) handling fee held in the registry of the United States District Court for the District of Utah be transferred to the U.S. Attorney's Office, care of Assistant U.S. Attorney Loren

Washburn;

II.

IT IS FURTHER ORDERED that the Clerk of Court shall transfer the previously stated amount in the form of certified check or money order (identifying payment in partial satisfaction of the restitution order entered in Case No. 2:00-CR-00081-DB pursuant to the Court's entry of Final Judgment in the matter 2:99-CV-0692K) to U.S. Attorney's Office, District of Utah, c/o Loren Washburn, Assistant U.S. Attorney, 185 South State Street, Suite 400, Salt Lake City, Utah 84111 and with a copy of the certified check or money order sent to counsel for the Commission, Thomas M. Melton, Securities and Exchange Commission, 15 West South Temple Street, Suite 1800, Salt Lake City, Utah 84101 within ten (10) business days of this Order, and;

III.

IT IS FURHTER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over this action for the purpose of implementing and carrying out the terms of all orders and decrees which may be entered herein and to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

Dated this 8th day of August 2006.

UNITED STATES DISTRICT JUDGE